TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 344.

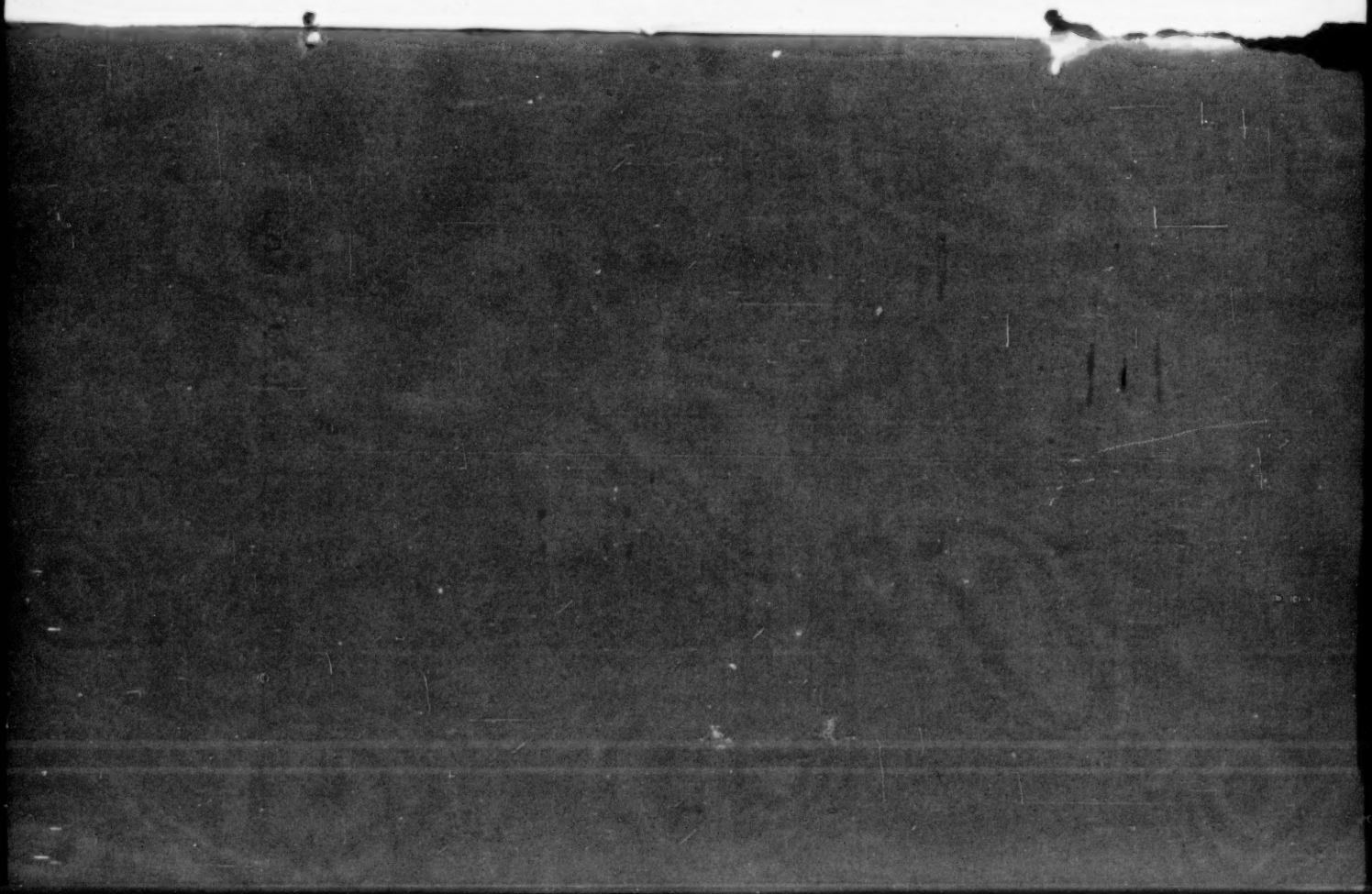
PINCKNEY C. BETHELL, PLAINTIFF IN ERROR,

vs.

ELIZABETH A. DEMARET, WIDOW OF JOSEPH T. HAWKINS, DECEASED, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 6, 1870.



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1 *Petition.*

D. C., parish St. Mary.

PINCKNEY C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

To the honorable the judge of the third judicial district of the State of Louisiana, holding sessions in and for the parish of St. Mary:

The petition of Pinckney C. Bethell, of Memphis, in the State of Tennessee, with respect sheweth that Joseph T. Hawkins, of the parish of St. Mary, in the State of Louisiana, is justly and legally indebted unto your petitioner in the sum of fifteen thousand dollars, besides interest and costs for this, to wit:

That in the city of New Orleans, some time in the month of March or April, 1862, your petitioner loaned to said Joseph T. Hawkins the sum of fifteen thousand dollars, for which the said Hawkins promised
2 to make and execute his two notes, each for the sum of seven thousand and five hundred dollars, payable to the order of your petitioner, one in two years, and the other in three years from the 8th April, 1862, conditioned to bear six and one-half per cent. interest from their date and to be secured by mortgage on said Hawkins' property, with his (said Hawkins') wife's renunciation in your petitioner's favor of all her rights of mortgage and privilege upon said property.

That on the 8th April, 1862, at the parish of St. Mary, Louisiana, the said Joseph T. Hawkins drew up, or caused to be drawn up, two notes, each for the sum aforesaid, and payable as aforesaid, to which he procured the signature of his wife, Mrs. E. A. Hawkins, and which he himself signed with his name, after the words following, to wit: "I authorize the above signature."

That on the same day, your petitioner being then absent from the parish of St. Mary and consequently not present at the drawing up or execution of the notes and mortgage, the said Hawkins, before
3 James G. Parkerson, recorder in and for the parish of St. Mary, caused an act to be drawn up, purporting to be an act of mortgage from himself and wife, executed by them in order to secure the principal and final payment of two notes made, drawn, and executed by them jointly on the 8th April, 1862, for seven thousand five hundred dollars each, and made payable to the order of your petitioner at two and three years from their date, & conditioned to bear six and a half per cent. interest per annum from their date until paid in full, which interest to be annually paid, and this it is stated in said act, "in consideration of the total sum of fifteen thousand dollars, which the said Hawkins and wife acknowledge to justly and truly owe to the said Pinckney C. Bethell for value received in that amount of confederate currency this day advanced and loaned them."

Your petitioner further represents that the property mortgaged consists of a certain tract or tracts of land, composing the sugar plantation on which they (Hawkins and wife) reside, lying and being
4 situated on both sides of the bayou Téche, intermediate between the town of Franklin and the village of Centreville, in this parish of St. Mary, containing about fifteen hundred superficial acres, and bounded above by land of John Moore & Co., and below by land of John H. Darnall, together with all the buildings and improvements

thereon and a certain number of slaves, whose names and ages are fully set forth in said act of mortgage.

And now your petitioner avers that, fully relying on the good faith of his debtor, and his intention and desire to pay him back the amount borrowed from him, at the time and on the terms and conditions on which the loan of fifteen thousand dollars, in good current funds, was made to him, the said Hawkins, your petitioner having some time after the execution thereof received the notes, and observing that they bore upon their face the evidence that their payment was secured by mortgage, and having the assurance that the said Hawkins had complied with his promise made to him at the date of the loan as before
5 explained, awaited the maturity of the notes to demand payment thereof. That the notes being due, and the troubles, which for several years had agitated the country, having passed away, your petitioner demanded of said Hawkins a compliance with his obligation, but was answered by said Hawkins that payment would not be made "on the ground that the money loaned to him by your petitioner had been so loaned in confederate bills or notes." That your petitioner having then examined the act of mortgage of 8th April, 1862, at the execution of which neither he, nor any one for him, was present, discovered the allegation by said Hawkins in said act that said loan of $15,000 had been made in "confederate currency," by which your petitioner supposes is meant the issue of the treasury of the late Confederate States government.

Your petitioner specially denies the truth of the allegation and demands strict proof of any failure of the consideration for which the notes of 8th April, 1862, were executed in his favor.

6 Your petitioner further avers that the loan made by him & which is the consideration for said notes, was made to Joseph T. Hawkins and not to his wife. That said Hawkins was not at that time, nor is he now, separated in property from his wife, between whom and himself there exists a community of *acequets* and gains as established by the laws of this State. That the notes executed by Mrs. E. A. Hawkins, with the authorization of her husband, are, in truth and in fact, & to all intents and purposes, the notes of Joseph T. Hawkins, which said Hawkins had promised to make and deliver to your petitioner as the evidence of his indebtedness, on the terms and conditions therein stated, for the loan made to him as aforesaid, and the payment of which he had agreed and promised to secure by a special mortgage on his plantation, with his wife's renunciation of all rights of mortgage thereon, a promise with which in fact he did comply, as your petitioner avers, and as your honor will ascertain on an examination of said act of mortgage of 8th April, which contains said renunciation in due form of law. And
7 with the above and foregoing explanations your petitioner hereto annexes the notes and act of mortgage of 8th April, 1862.

Wherefore, the premises considered, and the said Hawkins still persisting in withholding and refusing payment of his just debt, your petitioner prays that Joseph T. Hawkins may be duly cited to appear before your honorable court to answer this petition; that then and there he be condemned, adjudged, and decreed to pay to your petitioner the sum of fifteen thousand dollars, with interest thereon at the rate of six and one-half per cent. per annum from the 8th April, 1862, until paid, and the costs of this suit to be taxed; that the property mortgaged to secure the payment of your petitioner's claim, the slaves excepted, be seized and sold, and the proceeds of the sale thereof applied to the payment of such judgment as may be rendered in favor of your petitioner and against the defendant, and reserving all such right as he

may have, under the mortgage of 8th April, in and to any com-
8 pensation or allowance which may hereafter be made for the value of the negroes affected by said mortgage. Your petitioner prays for such other and further relief as the nature of this case may warrant & demand.

And as in duty bound, &c.

J. G. OLIVIER & DUMARTRAIT,
Of Counsel for Pl'ff.

A. L. TUCKER.

Received & filed 29th June, 1866.

J. W. LYMAN, Jr.,
Deputy Clerk.

Notes sued on.

Marked "A."

$7,500. APRIL 8TH, 1862,
Parish of St. Mary, La.

Two years after date we promise to pay to the order of Pinckney C. Bethell the sum of seven thousand five hundred dollars, with six and a half per cent. per annum interest from date, until paid; which interest is payable annually, for value received.

E. A. HAWKINS.

9 I authorize the above signature.

JOS. T. HAWKINS.

"B."

$7,500. APRIL 8TH, 1862,
Parish of St. Mary, La.

Three years after date we promise to pay to the order of Pinckney C. Bethell the sum of seven thousand five hundred dollars, with six and a half per cent. per annum interest, from date until paid; which interest is payable annually, for value received.

E. A. HAWKINS.

I authorize the above signature.

JOS. T. HAWKINS.

Citation.

State of Louisiana, district court, parish of St. Mary.

P. C. BETHELL
vs.
J. T. HAWKINS. } No. 6066.

To Joseph T. Hawkins, of the parish of St. Mary:

10 You are hereby summoned to appear before the district court in and for the parish of St. Mary on the first Monday of October next, and comply with the demand contained in the petition of Pinckney C. Bethell against you, (a copy of which is hereunto annexed,) or file your answer thereto in the office of the clerk of said court, at the court-house in the town of Franklin, if ten days shall remain between

the time of the service hereof and said first Monday of October next; but if so many days shall not remain, then in ten days after the service thereof, allowing one day for every ten miles from your residence to the place of holding said court.

Witness the honorable Fred. Gates, judge of said court, this 2d day of July, A. D. 1866.

ROB'T W. ALLEN, *Clerk.*

(Endorsed:)

Original delivered 2d July, 1866.

ROB'T W. ALLEN, *Clerk.*

11 Received this the 2d day of July, 1866. Duly served by leaving a copy of this citation, with a certified copy of the original petition annexed, at the usual domicil of Joseph T. Hawkins, in this parish, in the hands of Mrs. Hawkins, his wife, a free white person above the age of fourteen years, personally known to me, residing in the same house, this 31st day of July, 1866.

J. C. PECOT,
Deputy Sheriff.

Ret'd & filed 2d August, 1866.

J. W. LYMAN, JR.,
D'ty Clerk.

Copy act of mortgage.

J. T. Hawkins & wife to P. C. Bethell.—"6."

STATE OF LOUISIANA, *Parish St. Mary:*

12 Before me, James G. Parkerson, parish recorder, and ex-officio notary public in and for the parish of St. Mary, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Dr. Joseph T. Hawkins and his wife, Mrs. E. Ann Demaret, residing with her said husband in this said parish of St. Mary, and by him herein duly authorized and assisted, who declared that whereas they had made, drawn, and executed their joint two promissory notes, dated April eight (8) instant, 1862, for the equal sum each of seven thousand five hundred dollars, and made payable to the order of Pinckney C. Bethell, also of this parish aforesaid, respectively at two and three years from their date, and conditioned to bear six & a half per cent. per annum interest from their date until paid in full, which interest on the whole amount of their said indebtedness is to be paid annually; and this in

13 consideration of the total sum of fifteen thousand dollars, which the present appearers acknowledge to justly and truly owe to the said Pinckney C. Bethell for value received in that amount of confederate currency, this day advanced and loaned them, the said appearers, receipt whereof they do hereby acknowledge and give good acquittance and discharge therefor. Which promissory notes after having been paraphed "Ne varietur" by me, said recorder, in order to identify the same, with these presents, have been remitted to said drawer, who acknowledges due possession and delivery of the same.

And in order to secure the punctual and final payment of the said notes, and all eventual interest as aforesaid, when the same shall respectively become due, according to the stipulations herein written, and to the tenor of the said notes they, the said appearers, declared that they did and doth hereby specially mortgage, affect, and hypothecate in

favor of said Pinckney C. Bethell the following-described property, to wit:

14 That certain tract or tracts of land, composing the sugar plantation on which they reside, lying and being situate on both sides of the bayou Téche, intermediate between the town of Franklin and village of Centreville, in this parish of St. Mary, containing about fifteen hundred superficial acres, and bounded above by land of John Moore & Co., and below by land of John H. Damall, together with all the buildings and improvements thereon, and the following named slaves, worked and employed on said plantation, viz: Casimir, 53 years; Daniel, 52; Hawkins, 52; Jessey, 51; Ben, 45; Dan Griffin, 45; Austin, 43; Jinn, 42; Caleb, 40; Isaac, 40; George, 40; Granville, 38; Simon, 38; Frederick, 35; Robert, 35; Frank, 35; Austin Barrow, 36; Joe, 34; Anderson, 32; Henry, 29; Ell, 28; Jackson, 28; John, 28; Milton, 27; Edward, 27; Washington, 26; Mat, 26; Gibson, 26; Amos, 23; Andrew, 24; Abraham, 24; Amédé, 24; George, 24; William, 21; Allen, 20; Andrew, 17; Valsin, 19; Edmond, 20; Aleck, 16; Preston, 10; Abraham, 9; Sam, 9; Jim, 5; Billy, 6; Pleasant, 6; Taylor, 3½, Joe, 8; Jessi, 4; Garrett, 9 mo's; Joshua, 3 mo's; Horatio, 2½;

15 Mary, a woman, 60; Betsey, 60; Clara, 45; Leana, 39; Rachel, 37; Lucy, 37; Rose, 34; Letty, 34; Courtney, 31; Susan, 35; Kitty, 30; Frances, 28; Celia, 26; Amy, 24; Ellen, 22; Phrosine, 20; Mary Ann, 18; Ella, 16; Louisa, 16; Julia, 14; Martha, 15; Caroline, 18; Josephine, 14; Elsie, 11; Ledia, 10; Maria, 10; Delia, 8; Eveline, 5; Sylvia, 5; Caroline, 4; Sally, 4; Felician, 3; Celeste, 8; Jane, 2½; Eliza, Emma, and Grace, infants; together with their natural increase during the continuance of this mortgage, and so to remain mortgaged and affected until the full and final payment of their said indebtedness in principal and interest.

The certificate required by article 3328 of the civil code, hereby dispensed with, exonerating me, said recorder, from all liability from the non-production thereof.

The said Mrs. E. Ann Demaret declared that she did approve of the foregoing mortgage, and that thus approving of the same, she did furthermore hereby release the said property, from the matrimonial, dotal, paraphernal, and other rights and privileges and from all claims

16 that she may have against the same, whether by virtue of her marriage with her said husband or otherwise, hereby renouncing the same in favor of the said P. C. Bethell.

Whereupon, I, the said recorder, did inform the said wife, apart and out of the presence and hearing of her said husband, that she had by law, a legal mortgage on the property of her said husband.

First. For the restitution of her dowry and for the reinvestment of the dotal property sold by her said husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly. For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected.

Thirdly. For nuptial presents.

Fourthly. For debts by her contracted with her said husband. And Fifthly. For the amount of her paraphernal property, alienated

17 by her & received by her said husband or otherwise disposed of for the individual interest of her said husband. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the property herein mortgaged, whether under mortgage, privilege, or otherwise.

the time of the service hereof and said first Monday of October next; but if so many days shall not remain, then in ten days after the service thereof, allowing one day for every ten miles from your residence to the place of holding said court.

Witness the honorable Fred. Gates, judge of said court, this 2d day of July, A. D. 1866.

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(Endorsed:)

Original delivered 2d July, 1866.

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J. C. PECOT,
Deputy Sheriff.

Ret'd & filed 2d August, 1866.

J. W. LYMAN, JR.,
D'ty Clerk.

Copy act of mortgage.

J. T. Hawkins & wife to P. C. Bethell.—"6."

STATE OF LOUISIANA, *Parish St. Mary:*

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And in order to secure the punctual and final payment of the said notes, and all eventual interest as aforesaid, when the same shall respectively become due, according to the stipulations herein written, and to the tenor of the said notes they, the said appearers, declared that they did and doth hereby specially mortgage, affect, and hypothecate in

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15 Mary, a woman, 60; Betsey, 60; Clara, 45; Leana, 39; Rachel, 37; Lucy, 37; Rose, 34; Letty, 34; Courtney, 31; Susan, 35; Kitty, 30; Frances, 28; Celia, 26; Amy, 24; Ellen, 22; Phrosine, 20; Mary Ann, 18; Ella, 16; Louisa, 16; Julia, 14; Martha, 15; Caroline, 18; Josephine, 14; Elsie, 11; Ledia, 10; Maria, 10; Delia, 8; Eveline, 5; Sylvia, 5; Caroline, 4; Sally, 4; Felician, 3; Celeste, 8; Jane, 2½; Eliza, Emma, and Grace, infants; together with their natural increase during the continuance of this mortgage, and so to remain mortgaged and affected until the full and final payment of their said indebtedness in principal and interest.

The certificate required by article 3328 of the civil code, hereby dispensed with, exonerating me, said recorder, from all liability from the non-production thereof.

The said Mrs. E. Ann Demaret declared that she did approve of the foregoing mortgage, and that thus approving of the same, she did furthermore hereby release the said property, from the matrimonial, dotal, paraphernal, and other rights and privileges and from all claims

16 that she may have against the same, whether by virtue of her marriage with her said husband or otherwise, hereby renouncing the same in favor of the said P. C. Bethell.

Whereupon, I, the said recorder, did inform the said wife, apart and out of the presence and hearing of her said husband, that she had by law, a legal mortgage on the property of her said husband.

First. For the restitution of her dowry and for the reinvestment of the dotal property sold by her said husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Secondly. For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected.

Thirdly. For nuptial presents.

Fourthly. For debts by her contracted with her said husband. And Fifthly. For the amount of her paraphernal property, alienated

17 by her & received by her said husband or otherwise disposed of for the individual interest of her said husband. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the property herein mortgaged, whether under mortgage, privilege, or otherwise.

And the said E. Ann Demaret did thereupon declare unto me, said recorder, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and doth formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any nature or kind whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Dr. Joseph T. Hawkins being now present, aiding
18 and authorizing the said E. Ann Demaret in the execution of these presents, she, the said wife, did again declare that she did and doth hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said P. C. Bethell, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed at Franklin, in the parish of St. Mary, on this eighth day of April, eighteen hundred and sixty-two, in presence of Samuel L. Randlett and Joseph V. Fourny, both competent witnesses, who have signed these presents with the said appearers and me, said recorder, after due reading.

(Original signed)

E. A. HAWKINS.
JOS. T. HAWKINS.
SAM'L L. RANDLETT.
J. V. FOURNY.
J. G. PARKERSON,
Recorder.

I hereby certify the foregoing to be a true and correct copy of the original on file and of record in book 21 of mortgages, page 701,
19 No. 13553 of my office inscribed therein, April 8th, 1862.

Given under my hand and seal official this 7th day of April, A. D. 1866.

J. G. PARKERSON,
Deputy Recorder.

Received & filed 29th June, 1866.

J. W. LYMAN, JR.,
D'ty Clerk.

Answer.

3d judicial d't c't, parish St. Mary, La.

BETHELL *vs.* HAWKINS. } No. 6066.

Now comes the defendant Joseph T. Hawkins and for answer to plaintiff's petition denies all and singular the allegations therein contained.

Wherefore your respondent prays that plaintiff's action be dismissed at his costs and for general relief.

20 And as in duty bound.

M. E. GIRARD,
Att'y for Def't.

Rec'd & filed Oct. 1st, 1866.

ROB'T W. ALLEN, *Clerk.*

Order of court.

THURSDAY, *October 11th*, 1866.

Set for Monday the 29th.
Monday, October 29th, 1866, continued by consent.

Commission.

STATE OF LOUISIANA:

To any judge or justice of the peace of the parish of Orleans, greeting:

Know ye, that reposing special trust & confidence in your integrity, skill, and ability in the examination of witnesses, as well on the part of the plaintiff as on the defendant, in a certain case now pending in
21 our district court in and for the parish of St. Mary, wherein P. C. Bethell is plaintiff, and Joseph T. Hawkins defendant, No. 6066, we do authorize and empower you to cause to come before you at such time and place as shall be appointed, Robert Hare, Charles W. Cammack, George A. Frevet, Felix Morris, and Louis Monrose, witnesses, to be examined on part of the defendant, and them diligently examine on oath, first had and taken before you, touching their knowledge of the matter of controversy aforesaid, and such their examination so taken to reduce to writing, and send distinctly enclosed up under your hand and seal to us in our court aforesaid, without delay, on or before the 2d Monday of April next, together with this writ.

Witness the honorable Fred. Gates, judge of said court, this 26th day of March, A. D. one thousand eight hundred and sixty-seven.

ROB'T W. ALLEN,
Clerk Dist. C't.

22 3d dist. court, parish St. Mary.

P. C. BETHELL
vs. } No. 6066.
J. T. HAWKINS.

Interrogatories to be propounded to Robert Hare, Charles W. Cammack, George A. Frevet, Felix Morris, and Louis Monrose, all of whom reside in New Orleans, in the State of Louisiana, and are material witnesses of defendant, in whose behalf they are to be examined.

1st. Do you or do you not know the parties to this suit; if yea, how long have you known them?

2d. Where do you reside, and what is your occupation, & are you or not over the age of fourteen years?

3d. Please examine the three copies of drafts or bills of ex-
23 change, marked A, B, and C, hereto annexed, and state whether you do or do not know anything of the originals of said copies?

4th. Were or were not said originals of said copies paid by the drawers on presentation; if yea, in what kind of money were they, or either of them, paid?

5th. Were they or were they not paid in currency; if yea, what was the currency in New Orleans at the time of said payment? State what was bankable paper at the time of the payment of said drafts, & each of them.

6th. Did you or did you not deposit some, or all, of said drafts, of which the said copies are copies, in bank, to your credit, and did you

not check against the said deposits for confederate money, and
24 receive the money in confederate money?

7th. Did you or did you not deposit one or more of said drafts in bank in the name of some other person or persons, and was or was not the account of said draft checked or drawn out in confederate money?

8th. What was the currency in the State of Louisiana in April & March, 1862?

9th. If you have the originals of the copies of drafts hereto annexed, annex the said originals to your answers hereto, and, in default of doing so, state why do you not annex the originals; and state whether the copies hereto annexed are or are not correct copies of the originals, both as to the face and the endorsements thereof.

25 10th. Were or were not the original drafts, of which the copies are annexed, genuine drafts? State any fact going to show that they were or were not genuine.

11th. State all else you know that will benefit the defendant.

JOS. T. HAWKINS.

Personally appeared Joseph T. Hawkins, who, being sworn, deposes and says that he is the defendant in the suit of P. C. Bethell vs. Joseph T. Hawkins, No. 6066 on the docket of the judicial district court of Louisiana for the parish of St. Mary, and that the testimony of Robert Hare, Charles W. Cammack, George A. Frevet, Felix Morris, and Louis Monrose, is material to the defence of the said case, and that said witnesses reside in the city and parish of New Orleans, in Louisiana.

JOS. T. HAWKINS.

26 Sworn to & subscribed before me this 25th day of March, 1867.

ROBERT W. ALLEN, *Clerk.*

Cross-X.

Dist. c't, St. Mary.

P. C. BETHELL
vs.
J. T. HAWKINS. } No. 6066.

Reserving all legal objections as to the relevancy or admissibility of the evidence sought to be obtained the plaintiff accepts service of the foregoing interrogatories, and propounds the following cross-interrogatory, which, however, is not to be held, as it is not intended to be a waiver of any of the objections he may urge against the interrogatories themselves, or to the answers thereto.

To the witness R. Hare:

27 If the drafts or checks, which appear to have been endorsed by you, and of which two of the papers annexed to the defendant's interrogatories purport to be copies, were paid, please say for whose account they were collected, and who was credited with the amount thereof.

J. G. OLIVIER & DUMARTRAIT,
of Counsel for Bethel.

MARCH 25TH, 1867.

Copies of drafts.

"A."

$994 35. BRANCH BANK OF TENNESSEE,
Memphis, March 4th, 1862.

In bankable funds, pay to the order of P. C. Bethell nine hundred and ninety-four $\frac{35}{100}$ dollars.

C. H. HAILE, *Cas.*

To UNION BANK OF LA., NEW ORLEANS. No. 5316.

(Written across the face in red ink:) 5316. Nine hundred & ninety-four $\frac{35}{100}$ doll's.

SAM'L L. MAY, *Clk.*

28 Endorsed:
Pay to the order of Joseph T. Hawkins.

P. C. BETHELL.

Pay to the order of C. R. Fassitt.

JOSEPH T. HAWKINS.

C. R. FASSITT.

R'D R. HARD.

"B."

$2,639 30. PLANTER'S BANK OF TENNESSEE,
Office at Memphis, March 1, 1862.

Pay to the order of P. C. Bethell, in currency, twenty-six hundred and thirty-nine $\frac{30}{100}$ dollars.

(Signed) A. SHEPHERD, *Cashier.*

To the CASHIER *of Union B'nk of La., New Orleans.* No. 848.

(Written across the face in red ink:) No. 848. Original. Twenty-six hundred & thirty-nine $\frac{30}{100}$ doll's.

M. R. LENNIS, *2d Teller.*

Endorsed:
Pay to the order of Joseph T. Hawkins.

P. C. BETHELL.

29 Pay to the order of Dumesnil, Martin & Co.

JOS. T. HAWKINS.

For dep.

DUMESNIL, MARTIN & CO.,
P. pro. LOUIS MONROSE.

No obligation.

H. M. SPOFFORD,
Pro. MARSHALL.

APR. 14TH, '62.

"C."

BANK OF WEST TENNESSEE,
Memphis, March 6th, 1862.

$4,261 35. No. 1520.

Pay to the order of P. C. Bethell forty-two hundred and sixty-one $\frac{35}{100}$ dollars in currency.

W'M MAY, *Cash'r.*

To CITIZENS' BANK, *New Orleans, La.*

(Written across the face in red ink:) No. 1520. Forty-two hundred & sixty-one $\frac{35}{100}$ doll's.

THEODORE KELING, *Clerk.*

Endorsed:

Pay to the order of Joseph T. Hawkins.

P. C. BETHELL.

Pay to the order of C. R. Fassitt.

JOS. T. HAWKINS.

30 C. R. FASSITT.

ROB'T HARE.

Deposition of witnesses.

UNITED STATES OF AMERICA,
The State of Louisiana, Parish of Orleans,
City of New Orleans:

Deposition of witnesses taken and subscribed before me, G. H. Braughn, second justice of the peace for the parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such on the third day of April, A. D. eighteen hundred and sixty-seven, between the hours of 9 o'clock a. m. and 6 o'clock p. m., of said day at my office, in the city of New Orleans, parish of Orleans, and State of Louisiana, in pursuance of a commission hereto annexed, and
31 to be read as evidence in a certain cause now pending in the third judicial district court, for the parish of Rapides, wherein P. C. Bethell is plaintiff, & Joseph T. Hawkins is defendant.

LOUIS MONROSE, first witness on the part of the defendant, witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose, and say, and answer as follows, to wit:

To 1st int'g: I know only the defendant since 1859. I reside in New Orleans.

32 To 2d int'g: I am a clerk and book-keeper, and am over 14 years of age.

To 3d int'g: In examining the drafts annexed to interrogatories, I recognize the one marked "B" as having been remitted to me when book-keeper and attorney-in-fact of the firm of Dumesnil, Martin & Co., then doing business in New Orleans; I received said draft on the 14th April, 1862.

To 4th int'g: I cannot answer from personal knowledge to int'g 4th,

because I deposited the check in Citizens' Bank, but received from said bank confederate money for said check by checks drawn in said bank.

To 5th int'g: I received confederate money for said check. The currency of New Orleans then was confederate money, and was also
33 bankable paper at that time.

To 6th int'g: I answered to interrogatory 4th.

To 7th int'g: Answered in int'g 4th.

To 8th int'g: The currency in the State of Louisiana, in March and April, 1862, was confederate money.

To 9th int'g: I have not the original of said drafts, but to the best of my recollection, the copy marked "B," hereto annexed, is a correct copy of the original, both as to the face and the endorsements thereon.

To 9th int'g: The draft marked "B," must have been genuine, from the fact that it was received by the Union Bank, the drawees
34 from the Citizens' Bank, in which said last institution I had deposited the original of said draft.

To 10th int'g: I know nothing further.

L. MONROSE.

GEORGE A. FREVET, second witness for defendant, being sworn, answered—

To 1st int'g: I am acquainted with the defendant 18 years.

To 2d int'g: I reside in the city of New Orleans, and am cashier of the Union Bank of Louisiana, at New Orleans, and I am over fourteen years of age, being at present 48 years of age.

To 3d int'g: I have examined the three copies of draft, marked
35 "A, B, and C." The originals of drafts marked "A and B," were drawn on the Union Bank of Louisiana at New Orleans, and paid by the bank. The originals are in possession of the said bank. The draft, marked "C," is drawn on the Citizens' Bank. I know nothing about the said draft marked "C."

To 4th int'g: The originals of copies marked "A and B" were paid by the Union Bank, upon presentation, in confederate currency.

To 5th int'g: The original drafts, "A and B," were paid in confederate currency, which was the currency in the city of New Orleans at that time.

To 6th int'g: I know nothing about it.

36 To 7th int'g: I know nothing about it.

To 8th int'g: In March and April, 1862, the currency of the State of Louisiana was confederate money.

To 9th int'g: The originals of copies of drafts, marked "A and B," are in possession of the bank. The copies annexed to interrogatories, and marked "A and B," are correct copies of the originals in possession of the bank.

To 9th int'g: The original drafts of copies annexed, and marked "A and B," were genuine drafts. The bank would not have paid said drafts if they had not been genuine.

To 10th int'g: I know nothing further.

GEO. A. FREVET.

37 FELIX MORRIS, third witness for defendant, being sworn, answered—

To 1st int'g: I am acquainted with none of the parties to this suit.

To 2d in'tg: I reside in New Orleans; I am paying teller of the Union Bank of Louisiana; I am thirty-two years of age.

To 3d int'g: I have examined the copies of drafts annexed to inter-

rogatories, marked "A, B, and C." I recognize "A and B" as being correct copies of the original drafts. I know that the original of copy, marked "A" was paid on the 19th April, 1862, and that the original of copy, marked "B," was paid April 15th, 1862.

To 4th int'g: The original drafts of copies, marked "A and B,"
38 were paid upon presentation to the last endorser. At that time I was not the paying teller, and do not know in what currency said original drafts of copies, marked "A and B," were paid.

To 5th int'g: The original of copies, marked "A and B," must have been paid in currency; the bank paid nothing but currency; the currency in New Orleans at the time of said payment was Confederate States notes, which said Confederate States notes was bankable paper.

To 6th int'g: I know nothing about it.

To 7th int'g: I know nothing about it.

To 8th int'g: The currency of the State of Louisiana in March and April, 1862, was Confederate States money.

39 To 9th int'g: The copies annexed to interrogatories, marked "A and B," are correct copies of the original drafts, which said original drafts are in possession of the Union Bank of Louisiana.

To 9th int'g: The original drafts of copies, marked "A and B," were genuine; otherwise they would not have been paid by the bank.

To 10th int'g: I know nothing further.

FELIX MORRIS.

CHARLES W. CAMMACK, 4th witness, answered—

To 1st int'g: I know both parties.

40 To 2d int'g: I reside in New Orleans; am paying teller of the Citizens' Bank, and am 14 years of age.

To 3d int'g: I have examined said copies, and found that the original of the copy, marked "C," was received by the Citizens' Bank on deposit, April 17th, 1862, and was credited to the last endorser, Rob't Hare, The original draft is now in possession of the Citizens' Bank.

To 4th int'g: The original draft of copy, marked "C," was placed to the credit of Rob't Hare, in currency, which, at the time, was confederate money.

To 5th int'g: Already answered; confederate money or notes was bankable paper at the time alluded to.

To 6th int'g: No.

41 To 7th int'g: I do not know. This interrogatory does not apply to me. I will, however, state that, as Robert Hare was credited by the bank with confederate currency for draft, of which the copy is marked "C," I presume that Mr. Hare received the same currency in return.

To 8th int'g: The currency in Louisiana in April and March, 1862, was confederate money. I do not annex the original draft of the copy, marked "C," because the bank keeps all drafts and checks from foreign banks, on file.

To 9th int'g: The draft of which there is a copy annexed, marked "C," was a genuine draft; had the same not been genuine it would not have been received by the bank on deposit.

42 To 10th int'g: I know nothing more than what I have stated.

C. W. CAMMACK.

ROBERT HARE, fifth witness, answered—

To 1st int'g: I know both parties. I have known them for many years.

To 2d int'g: I reside in New Orleans. I am a commissioned merchant, and 58 years of age.

To 3d int'g: I have examined the copies of drafts annexed, marked "A, B, and C." I recognize the copies, marked "A and C." The originals of the said copies, marked "A and C," passed through my hands and were credited to the account of C. R. Fassitt.

43 To 4th int'g: The originals of said drafts, marked "A and C," were paid on presentation, and placed to my credit in the Citizens' Bank, and paid by said Citizens' Bank by checks drawn by me in the ordinary course of business, payable in currency, which at that time was confederate money.

To 5th int'g: Already answered. The currency at the time of said payment was confederate money; confederate money or note was bankable paper at the time alluded to.

To 6th int'g: Answered in 4th int'g.

To 7th int'g: Answered in 4th interrogatory.

To 8th int'g: Confederate money or notes was the currency in
44 the State of Louisiana in April and March, 1862.

To 9th int'g: The originals of copies referred to are not in my possession; they are in the possession of the Union and Citizens' Bank. I believe the copies, marked "A and C," hereto annexed, to be correct copies of the originals, and the endorsements genuine. The originals of copies, marked "A and C," hereto annexed, were genuine drafts.

To 10th int'g: I know nothing further than already stated above.

Cross-interrogatory:

To 1st int'g: The drafts of copies, marked "A and C," annexed, was collected for the account of Dr. C. R. Fassitt, and placed to his credit with me.

R. W. HARE.

45 THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

I, G. H. Braughn, second justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the city of New Orleans, in the parish of Orleans, and State of Louisiana, do hereby certify and make known that the foregoing depositions of Louis Monrose, Felix Morris, George A. Frevet, Cha's W. Cammack, and Robert Hare, were taken before me on the third day of April, A. D. eighteen hundred and sixty-seven, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing by my clerk, in my presence, and by myself and by the said deponents, respectively, sworn to and subscribed in my presence at the time and place aforesaid.

46 In testimony whereof I, G. H. Braughn, second justice of the peace for the parish of Orleans aforesaid, do hereunto set my hand at the city of New Orleans, in the State of Louisiana, this third day of April, A. D. eighteen hundred and sixty-seven.

G. H. BRAUGHN,
Second Justice of the Peace for the Parish of Orleans.

Received and filed April 9th, 1867.

J. W. LYMAN, JR.,
Deputy Clk.

Order of court.

MONDAY, *April 15th*, 1867.

Set for Saturday, the 20th.

Subpœna.

State of Louisiana, parish of St. Mary, D. C.

47 P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

To Charles R. Fassitt, Mrs. Célésie Bedell, and James G. Parkerson:

You are hereby summoned to appear in the said court on Saturday the 20th day of April, to testify on behalf of plaintiff in the above-entitled suit, and from term to term until finally discharged; and herein fail not under the penalty prescribed by law.

ROB'T W. ALLEN, *Clerk.*

PARISH ST. MARY, *April 18th*, 1867.

(Endorsed:)

Original.

Duly served by delivering a copy of this original summons to Dr. C. R. Fassitt and James G. Parkerson, both personally, this 20th April, 1867.

J. MILLET,
Deputy Sheriff.

48 Duly served by delivering a copy of this original summon to Mrs. Célésie Bedell, personally, this 22d April, 1867.

J. MILLET,
D'ty Sh'ff.

Ret'd & filed 22 Ap'l, 1867.

J. W. LYMAN, JR.,
D'ty Cl'k.

Order of court.

SATURDAY, *April 20th*, 1867.

Reassigned for Monday, the 22d.

Subpœna.

State of Louisiana, parish of St. Mary, D. C.

P. C. BETHELL
vs.
J. T. HAWKINS } No. 6066.

49 To Placide Penet, Peter Pecot, and Dr. C. M. Smith:

You are hereby summoned to appear in the said court on Monday, the 22d day of April, to testify on behalf of defendant, in the above-

entitled suit, and from term to term until finally discharged; and herein fail not under the penalty prescribed by law.

ROB'T W. ALLEN, *Clerk.*

PARISH ST. MARY, *April 22d*, 1867.

(Endorsed:)

Original.

Duly served by delivering a copy of this original summon to Dr. C. M. Smith, P. Peuet, both personally, this 22d April, 1867; and also served by leaving a copy of this original summon at the usual domicil of P. Pecot, in this parish, in the hands of N. Todd, a free white person, above the age of fourteen years, personally known to me, residing in the same house, this 22d April, 1867, he being absent at the time.

J. MILLET, *D'y Sh'ff.*

50 Ret'd & filed 22d Ap'l, 1867.

J. W. LYMAN, JR.,
D'y Clk.

Order of court.

TUESDAY, *April 30th*, 1867.

Continued.

THURSDAY, *April 23d*, 1868.

Supplemental petition filed; order of revival allowed; process to issue.

Supplemental petition.

D. C., St. Mary.

P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

Pinckney C. Bethell, plaintiff in the above-entitled case, with respect represents that, since the institution of these proceedings, the defendant has died intestate, leaving as his only legal representatives the issue of his marriage with Mrs. Elizabeth A. Demaret, his widow, residing in
51 the parish of St. Mary, viz: Martin D., Henry, Mary, and Edward Hawkins, all minors, and under the natural tutorship of their mother, the said Elizabeth A. Hawkins, who has qualified as such natural tutrix; that it is necessary that this suit should be revived against the heirs at law, and only legal representatives of the deceased, through their natural tutrix, the said Elizabeth A. Demaret, widow of the late Joseph T. Hawkins.

Wherefore plaintiff prays to be allowed to file this his supplemental petition, making the heirs and only representatives of the deceased, parties defendant in this action, and that citation issue to, and service of this petition be made on, said Elizabeth Ann Demaret, widow, &c., natural tutrix to said minors, and praying for judgment against said natural tutrix as prayed for in the original petition against Joseph T. Hawkins. Petitioner also prays for general relief.

And as in duty bound, &c.

52 J. G. OLIVIER & DUMARTRAIT,
A. L. TUCKER,
Of Counsel for Pl'ff.

Rec'd & filed 23d Ap'l, 1868.

J. W. LYMAN, JR., *D'y Clk.*

Citation.

The State of Louisiana, parish of St. Mary, D. C.

P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

To Elizabeth Ann Demaret, widow and natural tutrix, of the parish of St. Mary:

You are hereby summoned to appear before the district court in and for the parish of St. Mary, ten days after the service of the present citation, and comply with the demand contained in the petition of
53 P. C. Bethell against you, (a copy of which is hereunto annexed,) or file your answer thereto in the office of the clerk of said court, at the court-house in the town of Franklin, allowing one day for every ten miles from your residence to the place of holding said court.

Witness the honorable Fred. Gates, judge of said court, this 24th day of April, A. D. 1868.

ROB'T W. ALLEN, *Clerk.*

Endorsed:
Original delivered April 24th, 1868.

ROB'T W. ALLEN, *Clerk.*

Received this the 24th of April, 1868. Duly served by leaving a copy of this citation, with a certified copy of the original petition annexed, at the usual domicil of Mrs. Elizabeth Ann Demaret, widow, &c., and natural tutrix, in this parish, in the hands of Miss Elizabeth Geiger, a free white person over the age of fourteen years, personally
54 known to me, residing in the same house, this 27th day of April, 1868, she being absent at the time.

W'M F. HAIFLEIGH, *Sheriff.*

Ret'd & filed 28th April, 1868.

J. W. LYMAN, *D'y Cl'k.*

Order of court.

WEDNESDAY, *May 5th*, 1869.

Set for Monday, the 17th.

Answer.

Elizabeth Ann Demaret, tutrix, answering the foregoing supplemental petition, pleads the general issue, and prays as in her original answer.

R. N. MCMILLAN,
Att'y for D'f't Tutrix.

Rec'd & filed May 18th, 1869.

S. LANAUX, *D'y Cl'k.*

55 *Subpœna.*

State of Louisiana, parish of St. Mary D. C.

P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

To James G. Parkerson:

You are hereby summoned to appear in the said court on Monday, the 17th day of May, to testify on behalf of plaintiff in the above-entitled suit, & from term to term until finally discharged. And herein fail not, under the penalty prescribed by law.

J. W. LYMAN, JR., *Clerk.*

PARISH OF ST. MARY, *May 17th*, 1869.

(Endorsed:)
Original.

Received this original subpœna this 17th day of May, 1869,
56 duly served by delivering a certified copy of same to James G. Parkerson personally, this 17th day of May, 1869.

EDWARD S. FLEMOT,
D'y Sheriff.

Ret'd & filed May 17th, 1869.

J. W. LYMAN, JR., *Clerk.*

Note of evidence.

D. C., St. Mary.

PINCKNEY C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

Plaintiff's evidence:

1st. Notes sued upon, marked "A & B."

2d. Certified copy act of mortgage mentioned in petition, with certificate of the recorder of the parish of St. Mary thereto annexed, marked "C."

3d. Depositions of Messrs. Cammack and Hare, taken under a
57 commission, and testimony of all witnesses in bundle, marked "D," together with the copies of the checks and drafts annexed to the interrogatories and commission, and also the interrogatories and commission, marked "D."

P. C. BETHELL, plaintiff, sworn, says:

In March or April, 1862, witness met with Dr. Hawkins, defendant, in New Orleans. Defendant was from this parish, and witness from Memphis, Tenn.

Defendant told witness that his business there was to borrow money to pay off debts. After numerous conversations, witness mentioned to him that he had checks, drafts, and bills of exchange with him, and agreed if defendant would come to St. Mary's Parish, and give witness a mortgage upon his property, with the renunciation of his (de-

58 fendant's) wife, that witness would let him (defendant) have some of his exchange, to the extent of $15,000, that he (defendant) required. That while in New Orleans witness let the defendant have some of that exchange, the amount not exactly recollected under that agreement. Defendant was to come up to the parish of St. Mary, and execute the mortgage, with the renunciation of his (defendant's) wife. Defendant came up to St. Mary; witness returned to Memphis some time in April, 1862. Defendant came to witnesses' house with the notes, telling witness that he (defendant) had given the mortgage, with the renunciation of his (defendant's) wife. Witness then and there let defendant have the balance of exchange, either in drafts or checks, making up the amount of $15,000. Witness then some time thereafter, was at
59 Franklin, and went to the records of the office and got the recorder, Parkerson, to show him the mortgage given by defendant and wife, in witnesses' favor. In reading the mortgage, witness for the first time discovered that it was mentioned in the mortgage that the $15,000 loaned by him to defendant were in confederate money.

Witness at once protested; told the recorder that it was not the understanding nor agreement between defendant and himself, and that he wanted the mortgage to be altered or a new mortgage given, leaving out the words "confederate money." The money given was not confederate money, and witness only wanted to carry out the original contract. Witness says that defendant was to give him defendant's two notes; witness at that time had been engaged in banking business in Memphis; witness knows that he had some checks from the Branch Bank of
60 Tennessee, on the Union Bank of Louisiana; witness being shown the copies of checks annexed to the interrogatories, and commission in bundle, marked "D," says they are copies of a part of the original checks that he (witness) gave to defendant when he made the loan. Witness says that these checks were from three different banks, located in Memphis, Tenn. Those checks were drawn to the order of witness, in the usual course of business.

X-cross:

Witness says the house mentioned by him in the examination, is situated about 12 miles from Franklin. All the drafts or checks given to defendant by witness, were drawn in the same form as the copies in package, marked "D," as that is the usual form of drawing bank checks.

Previous to the war, witness is of the impression that it was not the custom to make checks payable in currency, but he knows it is
61 at the present time, except when a check is drawn against a deposit of gold or specie.

In April or March, 1862, witness says that it is likely he drew money from the bank in New Orleans. Witness says it is likely he drew confederate money, but does not recollect positively; it may have been Louisiana Bank or confederate money. Witness says in the Bank of West Tennessee he had a considerable interest, some time prior to this transaction. In selling his interest in the Bank of West Tennessee, in 1860, the bank thereby became indebted to witness to a considerable am't. Witness thinks that some of these checks were in payment due him by the bank before the war; and witness further says that the bank was paying gold in 1859 and 1860 for her notes. Witness' impression is, that, like other banks, they were paying the currency of the
62 country, but does not profess to know. Witness cannot say what arrangements the banks had made in April and May, 1862. The understanding of witness is, that they were paying out confederate

money, or checks and drafts; that is the impression of witness. During those times witness was not very often in the city. Witness says that there was a great variety of opinions about what was meant by the term of currency. Bank money was currency; confederate money was also called currency by many. The impression of witness was that the whole of the $15,000 was in checks, drafts, and bills of exchange, the one or the other; can't say exactly. That is witness' best recollection of the fact. Witness returned to St. Mary some months afterwards, and examined the mortgage, but does not recollect the exact time. Witness does
63 not remember of accepting the mortgage as it was written, either in writing or verbally.

Pl'ff evidence:

Witness has accepted the benefit of that mortgage in this suit, according to the terms of the original agreement, when he loaned the money.

By the court:

Witness says New Orleans fell on the 26th April, 1862.

Pl'ff's evidence:

Witness says that the notes of the banks of Louisiana were, at that time, considered currency and bankable funds.

J. G. PARKERSON, sworn, says he is the recorder of the parish of St. Mary now, and was the recorder in April, 1862.

This act of mortgage, and notes sued on, were executed before
64 witness, as recorder of the parish of St. Mary. Mr. Bethell was not present when this act of mortgage and these notes were drawn. Witness drew the notes and the act of mortgage under the dictation of the defendant. It was some time after the execution of the notes and mortgage act before Mr. Bethell saw them. When Mr. Bethell first read the act of mortgage, he made a remark that the clause relating to "confederate currency" should not be in the act of mortgage; and witness thinks that Bethell objected to it on the ground that such was not the understanding when the loan was made.

Witness thinks Mr. Bethell told him then that the agreement between him and defendant was that defendant was to give him his notes and mortgage on his plantation, with renunciation of his (defendant's) wife, and that the notes were to be signed by defendant & his wife.

X-cross:

65 Witness says he had some funds in New Orleans at that time, but did not draw any.

By the court:

The funds were sent to witness after New Orleans had fallen.

CHA'S R. FASSITT, sworn, says:

(Witness being shown the checks in bundle marked "D," and the checks marked "A and C.") The original checks, of which the checks marked "A and C" are copies, were paid to witness by defendant in payment of a debt due by defendant to witness. The debt was due prior to the war. Witness received the checks for the full amount.

X-cross:

Witness does not remember whether he transferred the checks
66 above mentioned, marked "A and C," or collected them.

It is admitted that U. S. treasury notes were not in circulation as currency in New Orleans previous to the 26th April, 1862.

Evidence closed.

I hereby certify that the foregoing is all the evidence adduced on the trial of this case.

S. LANAUX,
D'y Clerk.

Pl'ff evidence.

Notes sued on, marked "A and B." (See pages 8 & 9.)

Copy act of mortgage, and recorder's certificate annexed, marked "C." (See page 11.)

67 Deposition of witnesses taken under a commission, and copies of checks and drafts annexed. (See page 27 & 30.)

Order of court.

WEDNESDAY, *May 19th*, 1869.

Judgment for plaintiff. (See decree.)

Bill of exceptions.

P. C. BETHELL
vs.
J. T. HAWKINS. } No. 6066.

Be it remembered that on the trial of this case the plaintiff, after having put in evidence the notes sued upon, and a certified copy of the notarial act of mortgage, with the certificate of inscription, offered the following testimony in his own evidence in the following words:

68 "In March or April, 1862, witness met Dr. Hawkins, defendant, in New Orleans. Defendant was from this parish, and witness from Memphis, Tennessee. Defendant told witness that his business there was to borrow money to pay off debts. After numerous conversations witness mentioned to him that he had checks."

To the whole of which testimony of Bethell, as written out in full in the statement of facts on file in the record, the defendant objected, so far as said testimony went to prove conversations between himself and Hawkins at any time previous to, at the time of, or since the making of, the act, on the ground that no parole evidence should be admitted of what may have been said before or at the time of making the act, or since, and for the further reason that said evidence was establishing or proving a mortgage by parole evidence.

69 The court, being of opinion that the evidence was admissible on the ground that, even admitting that the act of mortgage sued on falls within the purview of article 2256 C. C., the rule is that their cause is always open to proof explanatory of their true nature, as between the parties, (C. C., 1888-94; 13 A., 25; 4 An., 540,) admitted it; and to that opinion of the court the defendant excepted, and tendered this bill of exceptions to be signed, and which was accordingly signed in open court before signing judgment.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Rec'd & filed May 20th, 1869.

J. W. LYMAN, JR., *Clerk.*

Bill of exceptions.

D. C., St. Mary.

P. C. BETHELL
vs.
J. T. HAWKINS. } No. 6066.

70 Be it remembered that, on the trial of this case, plaintiff offered to give in evidence his own testimony which is in these words:

"Witness at once protested and told the recorder that it was not the understanding or agreement between defendant and himself; that witness wanted the mortgage to be altered or a new mortgage given, leaving out the words, 'confederate money,' as the money given was not confederate money, and witness only wanted to carry out the original contract."

(To the introduction of which defendant excepted on the ground that plaintiff could not give in evidence his declarations to a witness out of the defendant's presence.

And to the introduction of the testimony of J. G. Parkerson the defendant also objected for the same reasons as aforesaid.)

But the court being of opinion that said evidence was admissible under the pleadings, on the ground that the admission of parole to de-
71 feat written contracts by proofs of error or fraud is a rule of universal jurisprudence, and their cause is always open to proof explanatory of their true nature as between the parties, (C. C., 1842, 1888, 1894; 6 L., 258; 19 L., 431; 2 A., 92, 458, 908; p. 13 a 25; 4 A., 540,) admitted it, and to that opinion of the court the defendant excepted, and tendered this bill of exceptions to be signed, and which was accordingly signed in open court before signing of judgment.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Rec'd & filed 20th May, 1869.

J. W. LYMAN, JR., *Clerk.*

Bill of exceptions.

D. C., St. Mary.

P. C. BETHELL
vs.
J. T. HAWKINS. } No. 6066.

72 Be it remembered that on the trial of this case plaintiff, having first put in evidence the notes sued upon, and a certified copy of the notarial act of mortgage with the certificate of inscription, offered the testimony of Hare, and Cammack, and others, taken by commission, as well as his own testimony, and that of Parkerson and Fassitt, the introduction of which was objected to by defendant on the ground that no parole evidence was admissible to vary from, contradict, add to, or change any portion of a written or authentic act of mortgage upon which the defendant was sued in the case.

But the court being of opinion that said evidence was admissible on the ground that the cause of contracts is always open to proof explanatory of their true nature as between the parties, (C. C. 1888–94,) & a

fortiori when, as in this case, the contract or act was not signed by the plaintiff, one of the parties thereto, and also on the ground that
73 the admission of parole to defeat written contracts by proof of error or fraud is a rule of universal jurisprudence, and also because article 2256 C. C. does not apply to contracts in fraudem legis, whose true character may be shown by parole, (C. C. 1842, 1888, 1894; 13 A., 25; 4 A., 540; 4 R., 508; 6 L., 258; 19 L., 431; 2 A., 92, 458, 908;) admitted it, and to that opinion of the court the defendant excepted, and tendered this bill of exceptions to be signed in open court before signing judgment.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Rec'd & filed May 20th, 1869.

J. W. LYMAN, JR., *Clerk.*

Judgment.

D. C., parish St. Mary.

P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

74 In this case the parties having adduced their evidence, and it, together with the law, being in favor of the plaintiff:

It is, therefore, ordered, adjudged, and decreed that the plaintiff Pinckney C. Bethell do have and recover from the succession of the defendant, Joseph T. Hawkins, dec'd, represented by Mrs. Elizabeth A. Demaret, widow of said deceased defendant, and natural tutrix to Martin D., Henry, Mary, and Edward Hawkins, minor children, and only legal heirs of the deceased defendant, the sum of fifteen thousand dollars with interest thereon at the rate of six and one-half per cent. per annum from the 8th day of April, 1862, until paid, and all costs of suit.

It is further adjudged and decreed that the mortgage, executed by defendant, Joseph T. Hawkins, in favor of the plaintiff, on the 8th day of April, 1862, mentioned in plaintiff's petition, be recognized as
75 bearing upon the property described in plaintiff's petition, and in said act of mortgage, (excepting the slaves named therein,) and that said mortgaged property (the slaves excepted) be seized and sold according to law, and the proceeds of the sale thereof be applied to the payment of the amount of this judgment in principal, interest, and costs of suit.

Done, read, and signed in open court the 22d day of May, 1869.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Order of court.

SATURDAY, *May 22d*, 1869.

Defendant's counsel having moved in open court to be allowed an appeal, the same was granted, and made returnable to the supreme court of the State of Louisiana on the first day of its next session, to
76 be holden in the town of Opelousas, on appellant's furnishing bond and security, conditioned, as the law directs, in the sum of $300 (three hundred dollars) in case of said appeal being made devolu-

tive, and in an amount accordingly to law, in case of the same being made suspensive.

Appeal bond—three hundred dollars.

Know all men by these presents that we, Elizabeth A. Hawkins, tutrix of her minor children, of the parish of St. Mary, as principal, and Thomas J. Foster, also of the parish of St. Mary, as security, are held and firmly bound unto Joseph W. Lyman, jr., clerk of the third judicial district court in and for the parish of St. Mary, State of Louisi-
77 ana, and his successors in office, heirs, administrators, executors, and assigns, in the sum of three hundred dollars, for the payment whereof, well and truly to be made, we hereby bind ourselves and each of us, our heirs, administrators, executors, and assigns, firmly by these presents.

Done and signed at the parish of St. Mary this 24th day of May, A. D. eighteen hundred and sixty-nine.

Now whereas the above-bounden Elizabeth A. Hawkins, tutrix aforesaid, has obtained from the honorable the district court in and for the parish of St. Mary a devolutive appeal from a certain final judgment rendered against her in suit Pinckney C. Bethell vs. Joseph T. Hawkins, No. 6066 of the docket of said court, as will appear by order of appeal of record in said suit, which appeal is made returnable to the su-
78 preme court next to be holden in the town of Opelousas, parish of St. Landry. The conditions of the above obligation are such that, if the said above-bounden Elizabeth A. Hawkins, tutrix aforesaid, shall prosecute said appeal with effect, or shall pay or cause to be paid or satisfied any judgment that may be rendered against her in said appeal court, then this obligation to be null and void; otherwise to remain in full force & virtue in law.

E. A. HAWKINS.
THOS. J. FOSTER.

Witness:
R. U. McMILLAN.

Filed May 24th, 1869,

J. W. LYMAN, JR., *Clerk.*

STATE OF LOUISIANA, *Parish of St. Mary:*

79 I, Joseph W. Lyman, jr., clerk of the third judicial district court in and for the parish of St. Mary, do hereby certify that the foregoing (78) seventy-eight pages contain a true and exact copy of all the pleadings, proceedings, orders, & evidence, oral & documentary, adduced by the parties on the trial, & had & taken in the suit of Pinckney C. Bethell vs. Joseph T. Hawkins, No. 6066 of the docket of the district court of the parish of St. Mary, as appears by the record of said suit on file in my office.

In testimony whereof I have hereunto affixed my hand & seal official this 3d day of July, A. D. 1869.

[SEAL.] J. W. LYMAN, JR., *Clerk.*

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81

fortiori when, as in this case, the contract or act was not signed by the plaintiff, one of the parties thereto, and also on the ground that
73 the admission of parole to defeat written contracts by proof of error or fraud is a rule of universal jurisprudence, and also because article 2256 C. C. does not apply to contracts in fraudem legis, whose true character may be shown by parole, (C. C. 1842, 1888, 1894; 13 A., 25; 4 A., 540; 4 R., 508; 6 L., 258; 19 L., 431; 2 A., 92, 458, 908;) admitted it, and to that opinion of the court the defendant excepted, and tendered this bill of exceptions to be signed in open court before signing judgment.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Rec'd & filed May 20th, 1869.

J. W. LYMAN, JR., *Clerk.*

Judgment.

D. C., parish St. Mary.

P. C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 6066.

74 In this case the parties having adduced their evidence, and it, together with the law, being in favor of the plaintiff:

It is, therefore, ordered, adjudged, and decreed that the plaintiff Pinckney C. Bethell do have and recover from the succession of the defendant, Joseph T. Hawkins, dec'd, represented by Mrs. Elizabeth A. Demaret, widow of said deceased defendant, and natural tutrix to Martin D., Henry, Mary, and Edward Hawkins, minor children, and only legal heirs of the deceased defendant, the sum of fifteen thousand dollars with interest thereon at the rate of six and one-half per cent. per annum from the 8th day of April, 1862, until paid, and all costs of suit.

It is further adjudged and decreed that the mortgage, executed by defendant, Joseph T. Hawkins, in favor of the plaintiff, on the 8th day of April, 1862, mentioned in plaintiff's petition, be recognized as
75 bearing upon the property described in plaintiff's petition, and in said act of mortgage, (excepting the slaves named therein,) and that said mortgaged property (the slaves excepted) be seized and sold according to law, and the proceeds of the sale thereof be applied to the payment of the amount of this judgment in principal, interest, and costs of suit.

Done, read, and signed in open court the 22d day of May, 1869.

HENRY TRAIN,
Judge 3d Jud'l Dist.

Order of court.

SATURDAY, *May 22d*, 1869.

Defendant's counsel having moved in open court to be allowed an appeal, the same was granted, and made returnable to the supreme court of the State of Louisiana on the first day of its next session, to
76 be holden in the town of Opelousas, on appellant's furnishing bond and security, conditioned, as the law directs, in the sum of $300 (three hundred dollars) in case of said appeal being made devolu-

tive, and in an amount accordingly to law, in case of the same being made suspensive.

Appeal bond—three hundred dollars.

Know all men by these presents that we, Elizabeth A. Hawkins, tutrix of her minor children, of the parish of St. Mary, as principal, and Thomas J. Foster, also of the parish of St. Mary, as security, are held and firmly bound unto Joseph W. Lyman, jr., clerk of the third judicial district court in and for the parish of St. Mary, State of Louisi-
77 ana, and his successors in office, heirs, administrators, executors, and assigns, in the sum of three hundred dollars, for the payment whereof, well and truly to be made, we hereby bind ourselves and each of us, our heirs, administrators, executors, and assigns, firmly by these presents.

Done and signed at the parish of St. Mary this 24th day of May, A. D. eighteen hundred and sixty-nine.

Now whereas the above-bounden Elizabeth A. Hawkins, tutrix aforesaid, has obtained from the honorable the district court in and for the parish of St. Mary a devolutive appeal from a certain final judgment rendered against her in suit Pinckney C. Bethell vs. Joseph T. Hawkins, No. 6066 of the docket of said court, as will appear by order of appeal of record in said suit, which appeal is made returnable to the su-
78 preme court next to be holden in the town of Opelousas, parish of St. Landry. The conditions of the above obligation are such that, if the said above-bounden Elizabeth A. Hawkins, tutrix aforesaid, shall prosecute said appeal with effect, or shall pay or cause to be paid or satisfied any judgment that may be rendered against her in said appeal court, then this obligation to be null and void; otherwise to remain in full force & virtue in law.

E. A. HAWKINS.
THOS. J. FOSTER.

Witness:
R. U. McMILLAN.

Filed May 24th, 1869,

J. W. LYMAN, JR., *Clerk.*

STATE OF LOUISIANA, *Parish of St. Mary:*

79 I, Joseph W. Lyman, jr., clerk of the third judicial district court in and for the parish of St. Mary, do hereby certify that the foregoing (78) seventy-eight pages contain a true and exact copy of all the pleadings, proceedings, orders, & evidence, oral & documentary, adduced by the parties on the trial, & had & taken in the suit of Pinckney C. Bethell vs. Joseph T. Hawkins, No. 6066 of the docket of the district court of the parish of St. Mary, as appears by the record of said suit on file in my office.

In testimony whereof I have hereunto affixed my hand & seal official this 3d day of July, A. D. 1869.

[SEAL.] J. W. LYMAN, JR., *Clerk.*

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82 *Proceedings in the supreme court.*

The State of Louisiana, supreme court of the State of Louisiana, third district, Opelousas.

Extract from the minutes.

On Wednesday, Sept. 8th, 1869:
Court met pursuant to adjournment.
Present, their honors—
J. T. Ludeling, chief justice.
J. G. Taliaferro, associate "
W. G. Wyly, " "
R. K. Howell, " "
W. W. Howe, " "

PINCKNEY C. BETHELL
vs.
JOSEPH T. HAWKINS. } 717.

Submitted on briefs to be filed to day.

83 *Extract from the minutes.*

On Monday, Sept. 13th, 1869:
The court met pursuant to adjournment.
Present, their honors—
J. T. Ludeling, chief justice.
J. G. Taliaferro, associate "
R. K. Howell, " "
W. G. Wyly, " "
W. W. Howe, " "

PINCKNEY C. BETHELL
vs.
JOS. T. HAWKINS. } 717.

It is ordered, adjudged, and decreed, that the judgment of the district court be annulled, avoided, and reversed; it is further ordered that this suit be dismissed at plaintiff's costs.

84 *Opinion and judgment.*

PINCKNEY C. BETHELL
vs.
JOS. T. HAWKINS. } No. 717.

Appeal from the third judicial district, parish of St. Mary.

TALIAFERRO, J.:

In June, 1866, this suit was filed by the plaintiff, who prays judgment against the defendant on his two promissory notes with the interest thereon, each for the sum of $7,500, dated the 8th of May, 1862, payable respectively in two and three years after date with interest, at eight per cent. per annum from date. He also prays a decree enforcing the mortgage given to secure the payment of the notes so far as relates

to the land described in the act. By supplemental petition, filed
85 23d April, 1868, the suit was revived against the widow and natural tutrix of her minor children, the defendant having died during the pendency of the suit. The answer is a general denial. Judgment was rendered as prayed for, with an order that the land mortgaged be seized and sold to satisfy the debt.

The defendant has appealed.

The consideration for which the notes were given, was a loan of confederate money as expressed in the act of mortgage. The plaintiff aimed to evade the effect of this declaration by introducing himself as a witness, detailing conversations had with the defendant before and at the time the loan was made, and subsequently, going to show that the loan was made by furnishing the borrower exchange in drafts & checks.

This testimony was objected to by the defendant, & the objection
86 being overruled, he took a bill of exceptions.

We do not think it important to pass upon this bill of exceptions, as the testimony is insufficient to rebut the recital in the act of mortgage.

A second bill of exceptions was taken by the defendant's counsel to the ruling of the court, admitting that part of the plaintiff's evidence which is in these words: "Witness at once protested, (on seeing the mortgage,) and told the recorder that it was not the understanding or agreement between the defendant and himself; that witness wanted the mortgage to be altered or a new mortgage given, leaving out the words 'confederate money,' as the money given was not confederate money, and witness wanted to carry out the original contract." What the plaintiff said to a third party, out of the presence of the defend-
87 ant, he could not give in evidence, and the testimony should have been rejected. (12 An., 179; 5 L., 414; 11 An. 503; & 3d An., 280.)

The act of mortgage was executed before a notary and two witnesses on the 8th of May, 1862, the same day the notes were given, and they are identified with the act of mortgage by the notary's paraph "Ne varietur." The defendant's wife, authorized by the husband, joined in the act & made a renunciation of her rights upon the property mortgaged.

These acts were required by the plaintiff to be done before the money was advanced.

It appears that the plaintiff is a resident of Memphis, Tennessee, and was so at the time the loan was made. He was not present when the act was executed, nor was there any person present who accepted the mortgage for him. But the plaintiff seems to have aquiesced in
88 the act, for he says, in his own testimony, that "Defendant came to witness's house with the notes, telling witness that the defendant had given the mortgage, with the renunciation of his wife; witness then let defendant have the balance of exchange either in drafts or checks," &c. In his own testimony there is plainly a studied evasion in stating the time at which he first saw the mortgage. He says: "Witness," then, sometime thereafter, (meaning the time he gave defendant the drafts, &c.,) "was at Franklin, and went to see the records." But an allegation in the petition is more definite as to the time when he protested to the notary, and required the words "confederate money" to be stricken out of the act, or a new mortgage given. The petition sets out, "That the notes being due, and the troubles which for several years had agitated the country having passed away, your petitioner demanded of said Hawkins a compliance with his obligation, but was an-
89 swered by said Hawkins, that payment would not be made, on the

ground that the money loaned to him by your petitioner had been so loaned in confederate bills or notes. That your petitioner having then examined the act of mortgage, &c., discovered the allegation by said Hawkins in said act that said loan of $15,000 had been made in confederate currency."

The plaintiff affects now to accept the mortgage according to what he says was the original agreement, namely, that he loaned the defendant $15,000 "in good current funds," on condition that defendant would execute a mortgage on his land and slaves. He can only accept the act of mortgage in the terms and sense in which it is expressed. The law is plain on that subject. (Civil Code, articles 1792, 1795, 1799.)

If he has not accepted the act according to its terms there is no contract, and he cannot proceed with his case. If he has accepted in
90 the only way in which he could accept, he is bound by the act, and cannot gainsay its meaning and purport. There is no ambiguity in the terms used, and no room for extraneous aid to interpret them.

He is endeavoring to enforce a contract the consideration of which was "confederate currency." The nullity of contracts founded upon that unlawful currency has been frequently determined.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be annulled, avoided, and reversed. It is further ordered that this suit be dismissed at the plaintiff's costs.

Filed Sept. 13th, 1869.

A. B. ANDERSON,
Cl'k Sup. C't.

91 *Motion for a rehearing.*

Supreme court Opelousas, September term, 1869.

PINCKNEY C. BETHELL, APPELLEE,
vs.
JOSEPH T. HAWKINS, APPELLANT. } No. 717.

The counsel for the plaintiff and appellee in this case, considering that the judgment rendered by this court is against the law and the evidence in the record, and that it does grave injury to their client, respectfully move this honorable court to grant a rehearing in this case, for the reasons and on the grounds specially set forth under the first, second, third, fourth, fifth, sixth, and final points in their brief, which is herewith submitted and made part of this application, and for other reasons
92 which will be presented herein; and we most respectfully but earnestly beg this honorable court carefully to consider these several points, and the authorities therein referred to, as well as the evidence in the record bearing upon these points and specially referred to in our brief herewith submitted.

If we are not blinded by undue zeal for the interest of our client, the argument and authorities contained in our brief present as complete a demonstration of the right of the plaintiff to recover against the defendant, under the established jurisdiction of this State, as is often made before this tribunal.

We are the more solicitous that a rehearing be granted because the several arguments presented in our brief, and the authorities cited in support of those arguments are none of them noticed in the opinion rendered by the court and seem not to have engaged the atten-

93 tion of the court; and because, moreover, the court has taken no notice, in its decision, of the evidence elicited by the defendant himself from his own witnesses, taken under commission, and found at p. 30 to 46 of the record. This evidence directly contradicts the truth of the statement made by the defendant in the act of mortgage, that the $15,000 loan was in "confederate currency." It shows that at least $7,885 of the loan was in bank checks, transferred by the plaintiff to the defendant, and by the latter transferred, without discount, to his creditors, in payment of his debts due before the war. (See these checks at pp. 27 & to 30 of the record.)

The defendant transferred two of these checks, amounting to $6,900 65, to Charles R. Fassitt, without discount, in payment of a debt due before the war. (See Fassitt's testimony, p. , of the record.)

94 Now this evidence, elicited by the defendant himself, from his own witness, all going to falsify his declaration in the act of mortgage that the loan was in "confederate currency," and in strict corroboration of the testimony of Bethell, we deem of vital importance in the discussion of the real nature of the loan; and we are not able to understand by what rule of evidence this testimony of defendant's witnesses, so vital to the issue, can be disregarded; or how the door to further parol evidence to the same point can be closed against the plaintiff after being thus opened by the defendant himself. We had supposed that no rule of evidence was better established than that where one party introduces parol evidence in reference to any matter at issue before the court, his adversary is at liberty to follow it up by introducing further evidence of the same nature pertinent to the

95 same issue, and we had further supposed it to be an unquestionable rule of evidence that a party is bound by the testimony of his own witnesses.

Tested by these rules, (which we conceive to be without exception,) has not the defendant, by examining witnesses as to the real consideration of his obligations towards the plaintiff, concluded himself from objecting to any legal evidence, whether written or oral, which the plaintiff may wish to introduce in relation to the same question; and is he not bound to abide by the effect of his own evidence? To us there seems nothing more clear. The defendant examined his witnesses on this point, under commission, which was duly executed and returned into court; but finding their testimony prejudicial to his case, he chose not to introduce it on the trial, but as held in 3 R., 57, and 4 La., 158, the plaintiff had an unquestionable right to introduce this testimony

96 in support of his case, and he did, in fact, introduce it without objection, (20 An., 70; 20 An., 306.)

In the 15th An., 389, it is held that "full effect is given by the supreme court to evidence received in the inferior court, without objection;" and in 14 An., 161, it is held that "it must now be considered settled, that effect will be given to parol proof of the sale of real estates, if it is received without objection," and that too, notwithstanding art. 2415, of the Civil Code provides that "all sales of immovable property or slaves, shall be made by authentic act or under private signature."

But what effect has this court given to this evidence elicited by the defendant from his own witnesses, and introduced by the plaintiff on the trial, without objection, and showing positively that more than

97 half the amount of the $15,000 loan was made in checks drawn on banks in New Orleans? None whatever. It seems to have escaped the attention of this honorable court. This evidence flatly con-

Louis Monrose says: "I deposited said check in the Citizens' Bank, but received from said bank confederate money for said check, by checks drawn on said bank." "I received confederate money for said checks—the currency of New Orleans then was confederate
105 money, and was also bankable paper at that time."

George Freret, cashier of the Union Bank says: "The original of the copies, marked A and B, were paid by the Union Bank, upon presentation, in confederate currency," * * "which was the currency of the city of New Orleans at that time."

Felix Morris says: "The checks, marked A and B, must have been paid in currency. The bank paid nothing but currency.

"The currency in New Orleans at the time of payment was Confederate State notes, which Confederate State notes were bankable funds."

Charles Cammack, the teller of the Citizens' Bank, says: "The original of the copy, marked 'C,' was received by the Citizens' Bank on deposit April 17th, 1862, and was credited to the last endorser, Robert Hare. The check was placed to the credit of R. Hare in currency, which,
106 at that time, was confederate money."

R. Hare says: "I recognize the copies, marked A and C. The originals of said copies, marked A and C, passed through my hands, and were credited to the account of C. R. Fassitt. The original drafts were paid on presentation and placed to my credit in the Citizens' Bank, and paid by said Citizens' Bank by checks drawn by me in the ordinary course of business, payable in currency, which, at that time, was confederate money."

Is it possible for any one to doubt as to what was the fund against which these checks were drawn? (See Foster & McAlister, ex., vs. The Bank of New Orleans, 21 An, 338.)

The counsel for the appellee, in his brief for a rehearing, would seem to contend that the plaintiff loaned checks and not money.

The judicial admissions made in plaintiff's petition is, that he
107 "loaned to Joseph T. Hawkins the sum of fifteen thousand dollars. He regarded the checks then as representatives of money, and the evidence shows that they were so, but of confederate money.

The reason why this court has held that contracts for confederate money should not be enforced, was because they were contrary to public policy, and not because the money or notes had no value. Therefore, whether defendant paid his debts with the checks or not, is immaterial in deciding this case.

We do not think this case similar to the case of Weaver vs. Anfou. In that case the court said, "Nothing shows here that any part of these checks has been paid in confederate money; to believe so, it would be surmising and conjecturing, when the law requires evidence so complete that it carries with it conviction upon the mind of the court.
108 Can we say, or can any one say, that confederate money was paid on those checks?"

The proof in that case did not satisfy the court; in the case at bar it is full and satisfactory.

The evidence satisfies us that the plaintiff knew the checks would be paid in confederate currency.

The rehearing is refused.

Filed Sept. 18th, 1869.

A. B. ANDERSON, *Clk.*

Petition for writ of error.

Supreme court of Louisiana, holding sessions at Opelousas.

PINCKNEY C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 717.

109 To the Honorable Joseph P. Bradley, an associate justice of the Supreme Court of the United States of America:

The petition of Pinckney C. Bethell, residing in the city of Memphis, and State of Tennessee, respectfully represents, that the honorable the supreme court of the State of Louisiana, holding sessions at Opelousas, in the said State, rendered a judgment in the suit in which your petitioner was plaintiff, and Mrs. Elizabeth A. Demaret, the widow of the said Joseph T. Hawkins, and the natural tutrix of the minors Martin D., Henry, Mary, and Edward Hawkins, the issue of the said marriage of the said Joseph T. Hawkins and the said Mrs. Elizabeth A. Demaret, the legal representatives of the said Joseph T. Hawkins,
110 was the defendant, and which said suit is number 717 of the docket of the said supreme court of the State of Louisiana at Opelousas; that the said judgment was rendered on Monday, September 13th 1869; that your petitioner is advised that there is error to his prejudice in the said judgment; that the said supreme court is the highest court of law or equity in the State of Louisiana, in which a decision can be had in the said suit; that in said suit is drawn in question the validity of an authority exercised under the State of Louisiana to declare contracts null and void, the consideration of which was confederate money or notes, on the ground that the exercise of the said authority is repugnant to the Constitution of the United States, and that the decision is in favor of the validity of such authority and
111 against the right claimed by plaintiff under the said contracts and under the Constitution of the United States; that it appears from the record of the said suit that the said supreme court of the State of Louisiana could not have given such judgment without deciding that the said authority exercised under the State of Louisiana to declare contracts null and void in violation of and in repugnance to the provisions of the Constitution of the United States against impairing the obligation of contracts; and that accordingly a writ of error lies from said final judgment to the honorable the Supreme Court of the United States.

Your petitioner further represents that he is advised and believes he is entitled to a writ of error in the premises on his giving bond in an amount to be fixed by your honor, with good and sufficient
112 security that petitioner, the plaintiff in error, shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good.

Wherefore your petitioner prays that a writ of error may be allowed to him, and that a citation be signed to be served on the said Elizabeth A. Demaret, widow of the said Joseph T. Hawkins, and the natural tutrix of the minors Martin D., Henry, Mary, and Edward Hawkins, the legal representatives of the said Joseph T. Hawkins, the defendant, according to law, and returnable to the Supreme Court of the United States upon petitioners giving bond as the law directs.

MILES TAYLOR,
Attorney for Petitioner.

It is ordered that a writ of error be allowed, as prayed for in the
113 foregoing petition, on petitioner's giving bond, with good and sufficient security, in the sum of five hundred dollars, according to law.

JOS. P. BRADLEY.
Asso. Justice Sup. C't U. S.

NEW ORLEANS, *6th of June* 1870.

Filed July 28th, 1870.

A. B. ANDERSON,
Clk Sup. C't Opelousas, La.

Bond.

Supreme court of Louisiana, holding sessions at Opelousas.

PINCKNEY C. BETHELL
vs.
JOSEPH T. HAWKINS. } No. 717.

Know all men by these presents that we, Pinckney C. Bethell,
114 of Memphis, Tennessee, as principal, and Robert Hare, of the city of New Orleans, State of Louisiana, as security, are held and firmly bound unto Mrs. Elizabeth A. Demaret, widow of Joseph T. Hawkins, and in her capacity of natural tutrix of the minors Martin D., Henry, Mary, and Edward Hawkins, the legal representatives of the said Joseph T. Hawkins, in the full and just sum of five hundred dollars, to be paid to the said Mrs. Elizabeth A. Demaret, widow & natural tutrix as aforesaid, her certain attorneys, executors, administrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, signed, sealed with our seal, and dated this sixth day of June, in the year of our Lord eighteen hundred and seventy.

115 Whereas lately in the Supreme Court of the State of Louisiana, holding sessions at Opelousas, in the suit depending in said supreme court between Pinckney C. Bethell, appellee, and Mrs. Elizabeth A. Damaret, widow of Joseph T. Hawkins, and natural tutrix of the minors Martin D., Henry, Mary, and Edward Hawkins, the legal representatives of the said Joseph T. Hawkins, appellant, judgment was rendered against the said Pinckney C. Bethell, & the said appellee. Pinckney C. Bethell, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to revise the judgment rendered in the aforesaid suit, and a citation directed to the aforesaid appellant, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington,
116 on the first Monday of December next:

Now the condition of the said obligation is such that if the said Pinckney C. Bethell shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise to remain in full force.

P. C. BETHELL.
ROB'T HARE.

Signed, sealed, & delivered in presence of—
MILES TAYLOR.
W. J. HARE.

Approved June 6th, 1870.

JOS. P. BRADLY,
Asso. Justice Sup. Court U. S.

Filed July 28th, '70.

A. B. ANDERSON,
Clk Sup. C't, Opelousas, La.

117 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in Opelousas, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mrs. Elizabeth A. Demaret, widow of Joseph T. Hawkins, and natural tutrix of the minors, Martin D., Henry, Mary, and Edward Hawkins, the legal representatives of the said Joseph T. Hawkins, appellant, and Pinckney C. Bethell, appellee, No. 717 of the docket of said court, where is drawn in question the validity of an authority exercised under the State of Louisiana to declare contracts null and void, the consideration of which was confederate money or notes, on the ground that the exercise of the said authority is repugnant to the Constitution of the United States, and that the decision is in favor of the validity of such authority and against the right claimed by the appellee, Pinckney C. Bethell, under the said contracts, and under the Constitution of the United States, a manifest error hath happened, to the great damage of the said appellee, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 6th day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) No. ——. United States circuit court. Pinckney C. Bethell versus Joseph T. Hawkins & al. Writ of error.

118 No. 717.—Supreme court of Louisiana, holding sessions in Opelousas. Pinckney C. Bethell vs. Joseph T. Hawkins. Writ of error to the supreme court of Louisiana.

Allowed June 6th, 1870.

JOS. P. BRADLEY,
Asso. Justice of Sup. C't U. S.

119 UNITED STATES OF AMERICA, *ss:*

To Mrs. Elizabeth A. Demaret, widow of Joseph T. Hawkins, & natural tutrix of Martin D., Henry, Mary, & Edward Hawkins, the legal representatives of the said Joseph T. Hawkins, residing in the parish of St. Mary, State of Louisiana, greeting:

You are hereby cited and admonished to be & appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the supreme court of the State of Louisiana, holding sessions at Opelousas, wherein Pinckney C. Bethell, of the city of Memphis, in the State of Tennessee, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of June, in the year of our Lord eighteen hundred & seventy.

JOSEPH P. BRADLEY,
Asso. Just. Sup. C't, U. S.

120 (Indorsed:) No. 717. Supreme court of Louisiana, holding sessions at Opelousas. Pinckney C. Bethell vs. Joseph T. Hawkins. Citation in error.

Received September 7, '70. Duly served the within citation in error, by delivering a certified copy of the same to Elizabeth Demaret, wife of Joseph Hawkins, dec'd, on the 7th day of Sept., 1870, personally.

E. B. MEUTZ, *Sheriff.*

Sheriff's fee, $2 60.
Re'td Sept. 12th, 1870.

121 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Supreme Court, Third District, State of Louisiana:

I, A. B. Anderson, clerk of the supreme court of the State of Louisiana for the third district, do hereby certify that the foregoing one hundred and twenty pages contain a true copy of the transcript of the proceedings had in the third judicial district court in and for the parish of St. Mary, in a certain suit wherein Pinckney C. Bethell was plaintiff, and Joseph T. Hawkins was defendant, and also of the proceedings had in this supreme court on the appeal taken by said Joseph T. Hawkins,

122 which appeal is now on the files thereof under number 717.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the town of Opelousas, this 24th day of October, anno Domini eighteen hundred and seventy, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.] A. B. ANDERSON,
Clk S. C. Opelousas, La.

Certificate of the judge legalizing signature of the clerk.

UNITED STATES OF AMERICA,
Supreme Court, 3rd District, State of Louisiana:

123 I, James G. Taliaferro, senior justice of the supreme court of

the State of Louisiana, do hereby certify that A. Baylis Anderson, esq., is clerk of the supreme court for the third district of the State of Louisiana; that the signature of to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith & credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand & affixed the seal of said court, at the town of Opelousas, this 16th day of November, A. D, eighteen hundred and seventy, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.] JAMES G. TALIAFERRO,
Senior Justice Sup. C't of Louisiana.

124 *Clerk's certificate legalizing signature of the judge.*

SUPREME COURT OF THE STATE OF LOUISIANA:

I, A. B. Anderson, clerk of the supreme court of the State of Louisiana for the third district, do hereby certify that the Honorable James G. Taliaferro is, and was at the time of signing the foregoing document, presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof I have hereunto set my hand & affixed the seal of of this hon. court, at the town of Opelousas, this the 16th day of November A. D. one thousand eight hundred & seventy.

[SEAL.] A. B. ANDERSON,
Clk S. C. Opelousas, La.

(Indorsement on cover:) No. 344. Pinckney C. Bethell, plaintiff in error, vs. Elizabeth A. Demaret, widow of Joseph T. Hawkins, dec'd, et al. Louisiana sup. court. Filed 6th December, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1870.

PINCKNEY C. BETHEL

versus

HAWKINS AND OTHERS.

ON WRIT OF ERROR TO THE SUPREME COURT OF LOUISIANA.

The defendants, in their proper person, appear, and move the Court to dismiss the writ of error in this cause, because there is no cause apparent in the record to give the court jurisdiction under the 25th section of the Judiciary Act of 1789, or in that section as re-enacted and modified in the 2d section of the act of February, 1867, (14 Statutes at Large, 386); and because there does not appear any cause for the suing out the writ of error aforesaid in the acts aforesaid, the defendants pray judgment of the same, and that it may be dismissed.

JOHN A. CAMPBELL,
Attorney for Defendants.

NEW ORLEANS, December 3, 1870.

MILES TAYLOR, Esq.:

Be pleased to take notice that on Friday, the 23d of December inst., in the suit of Bethel vs. Hawkins and others, filed in the Supreme Court of the United States, I will, on behalf of the defendants, move the Supreme Court of the United States at Washington City for a dismissal of the writ of error in the said cause. The grounds of the motion will appear in the copy of the motion hereto attached.

J. A. CAMPBELL,
For Defendants

Supreme Court of the United States.

WRIT OF ERROR TO THE SUPREME COURT OF LA.

PINCKNEY C. BETHEL

versus

HAWKINS AND OTHERS.

A MOTION IS MADE TO DISMISS THIS CAUSE FOR THE WANT OF JURISDICTION.

This cause was commenced in the Third District, before a District Court of the State.

The object of the suit is, to enforce a mortgage made by Hawkins and wife to secure the payment of two notes given by them for the loan of *Confederate money* some three weeks before the occupation of New Orleans by the troops of the United States, in April, 1862. The fact that Confederate money was the consideration appears on the face of the mortgage, and the fact that Confederate money was paid to the de-

fendants is proved in the case, and found to be true by the Supreme Court of the State.

The cause was heard in the Supreme Court on appeal from the District Court, upon the law and evidence de novo, and the judgment of the District Court was reversed and the petition dismissed, because the consideration was deemed to be illegal under the Code of the State, arts. 1887, 1889, 2026. The Supreme Court of the State decided, at the first term of the Court after the war, that a loan of Confederate money could not be a lawful cause of a contract.

Schmidt vs. Barker, 17 Ann. 261.

In the 19th Louisiana Annual, we count twelve cases in which the same point is decided. "Confederate Treasury Notes" forms a distinct title in the index of this volume, p. 551. Five others appear in the 20th volume under the same title, and in the succeeding volumes, there are many others.

There is some logical force in the argument in favor of this opinion upon the illegality of the consideration. The judges were not allowed to consider the Court in which they were sitting as having been at any time independent of the laws and statutes of the United States. Those laws and the acts of the departments of the Government have never regarded the Confederate States as anything more than a name. They are spoken of as the "so-called" Confederate States under those laws and statutes—and the notes as not only be-

ing issued without authority, but as issued for a purpose illegal, and hostile to the Government of the United States. They were issued to sustain and to promote what was declared to be an existing insurrection, and carried the evidence of that fact on their face.

The public policy of a neutral does not allow the circulation of the securities of a revolted colony, not recognised as an independent State, especially if the revolt be against a sovereign with whom we are at peace.

Thompson vs. Powles, 2 Simon, 194.

Kennett vs. Chambers, 14 How. S. C. R. 38.

But in this case the *revolt* was against the Government under the power of which this Court was sitting, and the judges supposed they could treat these notes only as having an illegal origin, and that any circulation of them was at the risk of the parties who took them.

Ogden vs. Folliatt, 3 D. & E. R. 726.

The Supreme Court, in this case, only adhered to the doctrine with which they set out in the early part of 1866.

The question now submitted is, whether this judgment presents any matter for the review of the Supreme Court of the United States? Does the constitution of the United States, or any treaty or law, authorize or protect the circulation of these Confederate notes, or prescribe that they shall be a basis for a contract of loan? The answer must be in the negative.

Does the adjudication that they do not form a legal cause for a contract of loan by the Supreme Court of

the State violate any part of the constitution, laws or treaties of the United States? The answer must be the same.

The decision of the State Court is, that such contracts fall within the prohibitory articles of the Code above cited.

That the circulation of those notes by any party for any cause, affected the public order and disturbed the public peace of the United States.

Unquestionably, this is true and beyond this the court did not go.

We understand the decision of the Supreme Court of the United States in the M. and M. R. R. Co. vs. Rock, 4 Wallace, 177, to determine that the Supreme Court will not review a judgement of this sort under the 25th section of the judiciary act.

The record is defective in failing to disclose that any question of the kind mentioned in the 25th section of the judiciary act was raised in the Supreme Court of the State, and determined by the Supreme Court.

We do not discover that any constitution, statute or treaty of the United States was cited to the court under which the validity of the contract was claimed to be supported. Nor do we find any constitution or statute of the State to have been drawn in question in the cause. The contest was on a matter of fact. Was this a loan of Confederate money? The Supreme Court, upon its interpretation of the evidence, found that

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there was a loan of Confederate notes, and decided that that such a loan was not a lawful consideration.

If the loan had been of United States treasury notes, and the decision had been that they were not better than the Confederate notes, or that their circulation injured the Confederate States, which were in possession of New Orleans, a statute of the United States would have been drawn in question. But there was an antagonism between these two forms of paper issue, and the officers of the United States expelled the Confederate notes as unlawful issue whenever they had power to do so.

The Supreme Court of the State have only carried to a liberal length the antipathy that was manifested during the war, to the circulation of these securities, and of the people of the United States, who have since amended their constitution so that it precludes any recourse upon the States for the payment of the debts of which they are the evidence. A reference to the public history will show that the discredit of the Confederate notes was one of the means used to carry on the war. The whole of the States declared to be in insurrection were soon filled with notes, resembling the Confederate notes so closely that the genuine could not be distinguished from the counterfeit, which came from abroad.

And there is extant a correspondence in which the Confederate Secretary of the Treasury, in his extremity, in consequence, asserted there could be no revolu-

tion if there was no paper on which to print other notes, and a special agent in consequence was sent to Europe to get paper and printing apparatus to manufacture more and distinguishable Confederate notes. The Supreme Court of the State have only maintained what they supposed to be the public policy in regard to transactions of which they were the basis and intended to support instead of infringing the laws of the United States.

J. A. CAMPBELL,
For Defendants.

[redacted] COURT of the UNITED [redacted]

[redacted] CHOONEY C. BETHELL

vs.

[redacted] ELIZABETH A. DEMARE [redacted]

[redacted]

Reply to the Argument in support of the [redacted]
under the Court, for Want of Jurisdiction.

[redacted]

MILES TAYLOR

[redacted]

SUPREME COURT of the UNITED STATES

PINCKNEY C. BETHELL,

vs.

MRS. ELIZABETH A. DEMAREST, WIDOW, *et al.*

Reply to the Argument in support of the Motion to Dismiss the Cause, for Want of Jurisdiction.

The provisions contained in the 25th section of the Judiciary Act of 1789, were embodied in that act by the Congress of the United States, in order to afford a mean to all the citizens of the United States wherever they might be resident, to protect themselves in the enjoyment of the rights which were intended to be secured to them under the authority of the Federal Constitution. At the time when the Union between the States was formed, and the National Constitution was framed and established, and ordained to "be the supreme law of the land," one of the great objects aimed at by the adoption of that instrument, was to render contracts inviolable, and to insure to the citizens of the several States the full and complete enjoyment of the rights acquired by them when they were entered into.

To accomplish that particular object, the clause was introduced into Article I. sec. 10 of the Constitution, by which it was declared

that "No State" "shall pass any" "law impairing the obligation of contracts." Nothing could, at any time, have been rightfully done, within the limits of a State, which would have had the effect of actually impairing the obligation of any contract before entered into, unless it was done under color or authority of the legislative power of the State; and as that power can only be exercised by the passage of laws, it was considered, and properly considered, that the simple declaration that 'No State shall pass any law impairing the obligation of contracts," was extensive enough to reach every case within the mischief to be guarded against. And this was the opinion of the Congress which organized and put in motion all the various departments of the National Government, as will be at once seen by referring to the 25th section of the Judiciary Act of 1789, in which it is expressly provided "that a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had," "*where is drawn in question the validity of* a statute of, *or an authority exercised under any State, on the ground of their being repugnant to the* Constitution" "of the United States," &c., "and the decision is in favor of such—their validity" "may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error," &c., &c.

There are but two questions for consideration under the motion made to dismiss the writ of error granted in the cause, viz.: First, Has there been an "authority exercised under the State" of Louisiana, which is "repugnant to the Constitution of the United States?" and, Second, Does the Record, before the Court, show that in a suit in the Supreme Court of the State of Louisiana there was "drawn in question the validity of an authority exercised under the State" of Louisiana, on the ground that it "was repugnant to the Constitution of the United States;" and that the decision in the suit was in favor of its "validity?"

1. The suit, in which the writ of error has been sued out, was brought to enforce the payment of two certain obligations, executed in the State of Louisiana on the 8th of April, 1862, and payable, one in two years, and one in three years, for value received; and to obtain the recognition of a right to have some immovable property, specially mortgaged to secure the payment of the obligations, sold to satisfy the principal and interest due on them, together with the costs of the suit.

To the petition, filed in the suit, there was an answer filed which contained a denial of all the allegations contained in the petition. No special defence was set up. On the trial of the suit it appeared that there was a clause contained in the act of mortgage, executed at the same time with the obligations sued on, to the effect that the "value" for which the two obligations were given, was declared to have been "received in that amount of Confederate currency, that day loaned," &c. There was judgment in favor of the plaintiff, in the court of the first instance; but upon appeal to the Supreme Court, the judgment of the lower court was reversed, and a judgment was rendered by the Supreme Court of the State of Louisiana against the plaintiff. The Supreme Court of Louisiana, in its decree, found the fact to be that the consideration, for the obligations sued on, "was received in Confederate notes," and then decided, in effect, that the contracts contained in the obligations sued on, were null and void, because they were given for Confederate money; and, in consequence thereof, the court exercised its power, under the authority of the State of Louisiana, to prevent the plaintiff from enforcing the payment of these obligations, so as not only to impair the obligation of the contracts in question, but to destroy them altogether.

At the time when these obligations were entered into, there was no law or Constitutional provision in existence, in the State of Louisiana, prohibiting the circulation of "Confederate notes," or declaring contracts, which were based upon them as a considera-

tion, null and void; and, in view of this fact, it will not be inopportune to refer to the law of Louisiana, then in force, on the subject of contracts, and to the position of the people, then within the territorial limits of that State.

To use the language of the Civil Code of Louisiana, in force at the time of the execution of the obligations sued on, "a civil obligation" was "a legal tie which" gave "the party with whom it" was "contracted, the right of enforcing its performance by law." C. C. 1750, 3. And "All things" which were "not forbidden by law," might "legally become the subject of, or the motive for contracts," &c., &c. C. C., 1757. The only requisites to the validity of agreements were: "1st, Parties legally capable of contracting; 2, their consent legally given; 3, a certain object which" formed "the matter of the agreement; 4, a lawful purpose." C. C., 1772, 1, 2, 3, 4.

At the time the obligations referred to were executed, it is a well-known historical fact that "Confederate notes" were the circulating medium in use among the people of Louisiana, as well as of many other of the Southern States, and that they were used as money, or the representatives of exchangable values, and were habitually in use as such by the people in procuring the necessaries and conveniences of life; in paying wages of servants, &c.; and in paying debts. When an individual borrowed or made a loan of Confederate notes, he, in fact, obtained what was considered as the representative of exchangable values, or money, and gave his obligation, payable in money, for it, with the design, (or under the influence of the motive,) of getting money, or the representative of exchangable values, so that he could, 1st, procure with it the necessaries of life, or its conveniences, by purchase from others; 2nd, pay those who rendered him the services required by him for the support or comfort of himself or his family; and, 3d, discharge the debts he might owe to others.

All such arrangements—that is, agreements between those who had what was then considered as money in Louisiana, and those who were in need of it for the supply of their wants, were necessary, under the circumstances of the times, to enable the population to live and subsist—and a real and effective consideration was received by the person who thus obtained "Confederate notes," to be used as money in his various relations with his neighbors and fellow-citizens who were placed in similar circumstances with himself. And upon every principle of right, equity and justice, the obligation or contract into which he entered, to pay a certain sum of money therefor, at a certain future time, was valid and binding, and subjected him to the payment of the stipulated sum in the currency of the day.

But it is said by the movers for the dismissal of the writ of error, that "Confederate notes" were deemed an illegal or unlawful consideration, under the code of Louisiana, at the time the obligations were executed, on the 8th of April, 1862. The slightest examination of the laws of Louisiana in force at that time, will show that there is no foundation for such an assertion.

The Code declared that "An obligation without a cause, or with a false and unlawful cause, can have no effect."—C. C., 1887. That "The cause is illicit when it is forbidden by law, when it is *contra bonos mores*, or to public order."—C. C., 1889. That "By the cause of the contract" "is meant the consideration or motive for making it," &c.—C. C., 1890; and that "when the consideration or cause of the contract really exists—at the time of making it—but afterwards fails, it will not affect the contract, if all that was intended by the parties was carried into effect at the time," &c.—C. C., 1892.

Here the consideration or cause of the contract, really existed at the time of making it. The Confederate notes were given and received, and they had a real value at the time, in fact, and in the estimation of the parties. All was done that was in-

tended to be done by the parties, when the Confederate notes were given to the borrower, and he had executed his obligations therefor. The transaction between them was neither *contra bonos mores*, or to public order. This can admit of no dispute. And the only question, then, is this: Was the giving or receiving of "Confederate notes" forbidden by law in the transactions between individuals in Louisiana, on the 8th of April, 1862?

In answer to this question it is only necessary to state that there was no "law" in force in the State of Louisiana on or before the 8th day of April, 1862, which prohibited the issue or circulation of Confederate notes; and that, in consequence of this fact, nothing can be more certain than that the "contract" was not invalid when entered into, in consequence of the cause or consideration being given or received in Confederate notes.

And, as a necessary consequence of all this, the contract sued upon by the plaintiff in the writ of error, was valid on the 8th day of April, 1862, under the Constitution and laws of the State of Louisiana, as then construed; and under the settled jurisprudence of the United States it is clear that no subsequent action of the Legislature or of the Judiciary of the State of Louisiana could impair its obligation. Gelpeke vs. Dubuque, 1 Wallace, 175. Havemeyer vs. Iowa County, 3 Wallace, 294.

In the Constitution of Louisiana, adopted in 1868, it was declared (Article 127), that "All agreements, the consideration of which was Confederate money, notes or bonds, are null and void, and shall not be enforced in the courts of this State." That this constitutional provision, so far as it was intended to operate on agreements entered into in the State on or before the 8th day of April, 1862, is repugnant to that clause in the Constitution of the United States which prohibits the several States from passing any law impairing the obligation of contracts, is too plain to require argument. And if the Supreme Court of Louisiana had based its

decision, in the present case, upon this constitutional provision, is it not equally plain that the right of the plaintiff to have that decision re-examined by the Supreme Court of the United States, under the 25th section of the Judiciary Act of 1789, would have been incontestable? And why would this be so? The answer is obvious: It would be because a right, of which the plaintiff was entitled to the fullest enjoyment, under the protection of the Constitution of the United States, had been invaded. The decision of the court would have destroyed the vested right—and the validity of a statute of the State of Louisiana would have been necessarily drawn in question, on the ground of its being repugnant to the Constitution of the United States.

But the counsel for the defendants in error asserts that in the present case no writ of error will lie to the Supreme Court of Louisiana, notwithstanding the fact that the decision in it was rendered sometime after the adoption of Article 127 of the Constitution of Louisiana, merely because that Supreme Court had seen fit, before the constitutional provision in question had been adopted, to render various other decisions in which they had destroyed vested rights of a similar character, to which other parties were entitled, under the protection of the same clause in the Constitution of the United States. The learned counsel seems to have lost sight of the fact that under the 25th section of the Judiciary Act of 1789, the right to have a final judgment or decree of a State court re-examined by the Supreme Court of the United States, is as perfect, where is drawn in question "the validity of an authority exercised under any State on the ground" that it is "repugnant to the Constitution of the United States," as when the validity of a statute of a State is called in question on that ground.

And, if this be true, what follows? Why, that the Supreme Court of Louisiana, in the discharge of its judicial functions, "exercises" an authority, under the State of Louisiana, whenever it renders a decision in a cause brought before it—that in rendering

its decisions it is bound by the Constitution of the United States—and the laws made in pursuance thereof, which are "the supreme law of the land,"—(Art. VI of the Constitution;)—and that every decision which is "repugnant" to any provision of the Constitution of the United States, is open to re-examination before the Supreme Court of the United States, on a writ of error. Upon any other principle than this there can be no uniformity in the jurisprudence of the nation—the citizens of the several States are without the means of protecting themselves in the enjoyment of the rightswhich the National Government was organized to secure to them—and what the entire people of the State cannot do, either through a constitutional convention, or through the action of their State Legislature, can be done by the Supreme Court of the State, in the absence of any local law on the subject. This position is too absurd to require confutation.

II. The jurisdiction of the Supreme Court of the United States over this cause, upon the writ of error to the Supreme Court of Louisiana, is shown by the record on file, because upon an examination of it it is apparent—

1st—That there was necessarily drawn in question, in it, the validity of an authority exercised, under the State of Louisiana, on the ground that it was repugnant to the Constitution of the United States; and that the decision was in favor of its validity. And—

2nd—That it was impossible that the Supreme Court of Louisiana should have given the judgment rendered, without deciding that question.—10 Peters, 368. Armstrong vs. Treasurer of Athens Co., 16 Peters, 281; Medberry vs. Ohio, 24 H., 413; Bridge Proprietors vs. Hoboken Co., 1 Wallace, 116, 141, 142.

And this fact will be more especially apparent on reference to the two opinions or decisions of the Supreme Court of Louisiana, rendered in the cause, which make a part of the Record under provisions embodied in the various constitutions which have been

in force in the State of Louisiana since it became a State, and which declared "That the judges of all courts, within the State' shall, as often as it may be possible so to do, in every definitive judgment, refer to the particular law, in virtue of which such judgment may have been rendered, *and in all cases adduce the reasons on which* their judgment is founded." Constitution of 1812, Art. IV, sec. 12. Constitution of 1845, article 70. Constitution of 1852, art. 72. Constitution of 1864, art. 76. Constitution of 1868, art. 80. The "reasons" adduced by the Supreme Court of Louisiana, in deciding cases brought before it, become, under these constitutional provisions, parts, and most important parts of the Record; and in consequence of this it is not only the right, but the duty of the Supreme Court of the United States to examine them whenever the question of jurisdiction is raised for decision. But we are not left to reasoning alone for support of this proposition. The very point has been decided by this Court, in the case of Cousin vs. Blanc's Ex., 19 Howard, 202, 207. In the opinion given in that case, in speaking of the manner in which they examined the judgment of a State court, with a view to decide the question of jurisdiction, the Court say, that "in doing so we refer to the opinion of that court, which is made part of the Record by the laws of Louisiana, and is explanatory of the judgment, of which it is there deemed an essential part. We refer to the opinion in order to show that questions did arise, and were decided, as required to give this Court jurisdiction;" and then the Court added, in that case: "This is necessarily so in cases brought here by writ of error, from Louisiana, because no bill of exception is necessary there when appeals are prosecuted. The court of last resort acts on the law and facts presented by the whole Record."

Nor is it a matter of any moment that the Supreme Court of Louisiana "decided at the first term of the court, after the war, that a loan of Confederate money could not be a lawful cause of a contract;" "because the consideration was deemed to be illegal

under the code of the State."—Articles 1887, 1889, 2026;—or that "in the 19th Louisiana Annual," there are "twelve cases in which the same point is decided;" or that "many others" appear "in the succeeding volumes," as is stated in the mover's printed argument in support of the motion to dismiss. In the present cause the plaintiff instituted proceedings in a State court of Louisiana, to enforce a contract in his favor for the payment of a sum of money, which was a valid and binding contract at the time it was entered into. That contract is now before the Supreme Court of the United States; and as it was recently declared by this Court, in the case of Butz vs. City of Muscatine—(8 Wallace, 576), "This Court construes all contracts brought before it for consideration, and in doing so its action is independent of that of the State courts, which may have exercised their judgment on the same subject. This is one of the functions we are called upon to perform in this case. The fact that one of the elements in the case is a statute of the State does not affect the legal result. We are of opinion that under the statutes of Iowa, in force when the contract was made, the relator is entitled to the remedy he asks; and that the right can no more be taken away by subsequent judicial decision, than by subsequent legislation. It is as much within the sphere of our power and duties to protect the contract from the former as from the latter." Chicago vs. Sheldon, 9 Wallace, 50. The City vs. Lamson, *ibid*, 478. Thorington vs. Smith, 8 Wallace, 1. Dean vs. Younell's Adm'n, *ibid*, 14.

All of which is respectfully submitted.

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